

Expert Reports

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LARYSSA JOCK, et al.,

Claimants,

-v.-

STERLING JEWELERS INC.

Defendant.

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

Plaintiff,

v.

STERLING JEWELERS INC.

Defendant.

**AAA
Case No.
11 160 00655 08**

**Case No.
08-CV-0706 (A)(M)**

EXPERT REPORT OF JAMES L. OUTTZ, Ph.D.

June 21, 2013

I. QUALIFICATIONS

I am an Industrial-Organizational (I/O) Psychologist in private practice in Washington, D.C. for over 30 years. Industrial-Organizational Psychology is the application of psychological principles, theory, and research to the world of work. I hold a Ph.D. in I/O Psychology, which I received from The University of Maryland in 1976. My area of specialization is selection, which encompasses the manner in which organizations hire, retain, develop, evaluate and promote employees.

I am a Fellow in the Society for Industrial and Organizational Psychology (SIOP) as well as the American Psychological Association and the American Educational Research Association, and I recently completed a four-year term as a consulting editor to the Journal of Applied Psychology. I served on the SIOP committee to revise its Principles for the Validation and Use of Personnel Selection Procedures. The Principles detail accepted professional practices regarding the development and validation of personnel selection procedures. I have served on a number of committees of the National Academy of Sciences charged with addressing national issues of employment selection and organizational staffing. I also served on the National Academy of Sciences' Committee for the Study of Federal Aviation Administration, Aviation Safety Inspector Staffing Standards. Past committee service includes the Committee on Workforce Needs in Information Technology and the Board on Testing and Assessment.

I have published works on a variety of topics including racial discrimination in employment, the role of cognitive ability tests in employment selection, the effect of testing medium on validity and subgroup performance, and implementing fair selection strategies. I edited a volume (Ottz 2010) on the measurement and minimization of

adverse impact.¹

I have devoted a significant part of my practice over the past 30 years to the development and validation of selection procedures for public safety positions. As an example, I have developed police sergeant promotion examinations for several municipalities including Hartford, Connecticut, Bridgeport, Connecticut, St. Petersburg, Florida, Baltimore, Maryland, and Detroit, Michigan. In carrying out these projects (some of them multiple times), I have developed specific expertise in job analysis as related to police positions. Job analysis is the process of determining what a job is and what it takes to perform it well. When this is determined accurately, the information provides a solid foundation for employment practices and decisions in many areas, including hiring, training, promotion, compensation and employee turnover.

I have developed and validated promotion procedures for several police ranks, including Sergeant, Lieutenant, and Captain. I have been retained by employers in both the public and private sectors and developed selection systems and/or selection procedures for entry level and managerial positions. A representative sample of clients includes ALCOA, CSX Transportation, Publix Super Markets Inc., Potomac Electric Power Company, the cities of New York, Chicago and San Francisco, the Federal Deposit Insurance Corporation, the United States Department of Justice (Federal Bureau of Investigation) and the United States Department of Labor. I have been retained by legal counsel on behalf of organizations such as The Boeing Corporation, Johnson and Johnson, Matsushita Communications Industrial Corporation of USA, and Mack Trucks, Inc.

¹ Outtz, J., (2010). *Adverse Impact*. Implications for Organizational Staffing and High Stakes Selection. New York: Routledge.

I have been retained as an expert by both plaintiffs and defendants in litigation involving human resources policies, practices and procedures. As an expert on behalf of plaintiffs as well as defendants, I have addressed issues of discrimination concerning race, ethnicity, gender and age. I am being compensated at an hourly rate of \$575 for my services in these cases.

II. PURPOSE

I have been asked by counsel for Claimants and Plaintiff to address several questions with regard to these cases involving Defendant Sterling Jewelers Inc. (“Sterling”). Each question is addressed in turn below.

1. Can the behavior and comments of Sterling senior managers and executives establish workplace norms that guide the behavior of managers elsewhere in the organizational hierarchy?

The research literature in Industrial and Organizational Psychology and Human Resources Management as well as my professional experience indicate that the leaders of organizations significantly influence most facets of the organization including organizational performance climate, culture, and the behavior of subordinates. Kaiser et. al., (2008) conceptualize leadership in terms of the performance of the team and organization for which they are responsible.² They reviewed ten meta-analytic studies to determine how leadership is measured and how leaders are effective. Meta-analytic studies are not single individual studies but “studies of studies” to determine trends and minimize random effects across studies. Kaiser et. al., (2008) conclude that there is a

² Kaiser, R., Hogan, R. and Craig, S. (2008) Leadership and the Fate of Organizations, *American Psychologist* Vol. 63, no. 2, 96-110.

clear relationship between who is in charge and whether an organization meets its stated mission and goals.

Most of the research on leadership has focused on the way leaders can have a positive effect on organizations. One theory that explains how leaders influence followers is known as *social learning*. This theory, which has substantial support in the psychological literature, is that leaders influence subordinates via a process known as modeling. Modeling has been recognized as one of the most powerful tools used by leaders to affect the behavior of employees. According to this theory employees (including managers) learn what to do and what not to do by observing a leader's behavior and its consequences.

Research on the extent and manner in which subordinates imitate supervisor behavior covers a span of thirty-five years. Weiss (1977) collected data from 141 Pairs of lower-level supervisors whom they designated "subordinates," and their direct superior.³ Data was collected from seven organizations that included three manufacturing firms, two large retail sales firms, a large financial service firm and a small rehabilitation center. The purpose of the study was to assess the degree of similarity between a subordinate's behavior and that of his or her immediate supervisor. Each subordinate described his or her own leadership style as well as the perceived competence, reward power and success within the organization of the superior. The subordinate also described his or her own feelings of self-esteem and the behavior reward system of the organization. Weiss (1977) hypothesized that attributes of a superior such

³ Weiss, H. (1977) Subordinate imitation of supervisor behavior: the role of modeling in organizational socialization. *Organizational Behavior and Human Performance*, 19, 89-105.

as status, power or perceived competence signal to the subordinate that the superior's behavior has been rewarded in the past and therefore emulating the superior's behavior will lead to similar rewards for the subordinate. The results of the study supported this hypothesis.

Manz and Sims (1981) conducted an examination of the modeling process also known as vicarious learning.⁴ They examined the relevant research literature to shed light on the belief that individuals are not dependent on direct experience of the consequences of their behavior for learning to take place. Manz and Sims (1981) provide a clear and concise definition of modeling. They state:

“Modeling is a process by which undesirable as well as desirable work behaviors can be learned. Indeed the challenge to managers is to utilize modeling effectively, in order to enhance the achievement of both personal and organizational goals.” (Manz and Sims, 1981 P. 109)

They highlight the fact that modeling plays a role in two forms of learning in organizations, the best known of which is training. However the second form of learning is less well known. They state:

“Less well known but of the utmost importance is the modeling that occurs in the day-to-day relationships between manager and employees. Even if the parties are unaware of the effects of models, learning through modeling does occur on a daily basis in organizations.
“The most important point to keep in mind is that each manager has a high potential for serving as a model for employee behavior. Employees are more likely to imitate the behavior of a manager than a co-worker because of the status, experience, and prestige of those holding managerial positions. Managers also have a unique opportunity to influence behavior because of their reward power.” (Manz and Sims, 1981, P. 109)

⁴ Manz, C., and Sims, H. (1981) Vicarious learning: the influence of modeling on organizational behavior. *Academy of Management Review*, Vol. 6 No. 1, 105-113.

Ostroff and Kozlowski (1992) studied the learning process that occurs when newcomers assimilate into an organization.⁵ They surveyed a sample of employees from companies ranging in size from less than 100 to more than 10,000. The employees were surveyed after they had been employed on average 17 weeks and again after an average of 35 weeks. Ostroff and Kozlowski (1992) found that the newcomers relied most on observation, mentors, supervisors and coworkers as sources of information about how to assimilate into the organization.

In a study directly involving sales managers, Rich (1997) studied the degree to which sales persons' performance was related to modeling the behavior of their sales managers.⁶ Rich (1997) surveyed sales persons and their immediate sales managers from 10 different U.S. companies. They found that modeling of the sales manager's behavior fostered trust between the manager and the salesperson and that trust affected overall sales performance and job satisfaction.

The research literature described above indicates that managers and executives influence the behavior of those subordinate to them primarily by serving as role models. Their actions establish work place norms that guide the behavior of supervisors and nonsupervisory employees throughout the organization.

Modeling the behavior of leaders can result in managers exhibiting ethical as well as unethical behavior. Relatively recent research has focused on negative organizational outcomes that can be traced to abusive leadership and the processes in which these

⁵ Ostroff, C. and Kozlowski (1992) Organizational socialization also as learning process: the role of information acquisition. *Personnel Psychology*, Vol. 45, 849-874.

⁶ Rich, G. (1997), The sales manager as a role model: Effects on trust, job satisfaction and performance of sales people, *Journal of the Academy of Marketing Science*, 25:4, 319-328.

negative influences are manifested. For example, Trevino, L., and Brown, M. (2005) found that leaders do in fact influence the ethical behavior of followers in an organization.⁷ As the scientific research described above would suggest, Trevino and Brown (2005) appropriately turn to social learning theory to explain how leaders influence employee ethical and unethical behavior. Their position is summarized by the following statement:

“Clearly, modeling by leaders can influence followers to be ethical or unethical. Leaders who engage in unethical behaviors create a context supporting parallel deviance (Kemper, 1966), meaning that employees observe and are likely to imitate the inappropriate conduct. If leaders are observed ‘cooking the books,’ enriching themselves at the expense of others, or lying to customers or suppliers, followers learn that such behavior is expected. If leaders are rewarded for unethical conduct, the lesson for followers becomes particularly strong.” (Trevino and Brown, 2005, p. 72)

“Leaders’ power to influence may be particularly effective because leaders make decisions about rewards and punishments that are imposed on employees, and followers learn vicariously by observing what happens to others. People in organizations pay close attention to rewards and punishments...and these contribute to modeling effectiveness because they are socially salient.” (Trevino and Brown 2005, p. 72)

I have been asked to offer an opinion regarding whether or not the behavior and comments of Sterling Senior Managers and Executives can guide the behavior of managers elsewhere in the organizational hierarchy. The scientific research described above supports the conclusion that leader behavior can influence and guide the behavior of peers and subordinates both positively and negatively. The focus of the complaints in

⁷ For example, Trevino, L. and Brown, M. (2005) The Role of Leaders in Influencing Unethical Behavior in the Workplace in Kidwell, E., and Martin, C., (Eds.) Managing Organizational Deviance, Thousand Oaks, Sage Publications 69-87

this case are gender-based treatment in compensation and promotion.⁸ Also, in the record there is substantial evidence of unwanted and offensive behavior and comments of Sterling senior managers and executives. The complaints include unwanted sex-related behavior (Unwanted Sex-Related Behavior). What follows is a discussion of how and whether abusive supervision including Unwanted Sex-Related Behavior of the leaders in an organization can result in abusive supervision by lower-level managers

There has been scientific research in recent years directed specifically at the issue of counterproductive behavior of leaders in an organization resulting in similar behavior by subordinates. Mawritz et al. (2012) studied whether abusive behavior by managers is positively related to abusive behaviors by supervisors beneath them.⁹ Mawritz et. al., (2012) defined abusive supervision as “subordinates’ perception of the extent to which their supervisors engage in the sustained display of hostile verbal and nonverbal behaviors excluding physical contact” (Mawritz et. al., 2012, p. 325). Mawritz et al. hypothesized that supervisors model the abusive behavior of their managers and engage in similar abusive behavior with their own employees. They predicted that abusive manager behavior would be positively related to abusive supervisor behavior which in turn would be associated with abusive employee behavior (i.e. employees’ abusive behavior directed at other organizational members). Note that the “trickle-down” model of Mawritz et al. (2012) is based on the same social learning theory described in other scientific research above. Mawritz et al., (2012) collected data from employees in work

⁸ The claimants allege, for example, that they are paid less and promoted less than similarly situated male employees.

⁹ Mawritz, M., Mayer, D., Hoobler, J., Wayne, S. and Marinova, S. (2012). A trickle-down model of abusive supervision. Personnel Psychology, 65, 325-357

groups (defined as three or more employees and their immediate supervisors) from different organizations in a number of industries including technology, government, insurance, finance, food service, retail, manufacturing and healthcare. Supervisors were asked to report on the abusive behavior of their managers and the employees were asked to report on the abusive behavior of their immediate supervisors. The results of the study showed a statistically significant positive relationship between managers' abusive behavior and abusive behavior by supervisors below them.

The research described above on the negative influence leaders can have shows that there is a theoretical basis for the belief that the behavior of leaders in an organization will be a model for good or bad for those in lower positions. Organization leaders set an example in terms of organizational norms, climate and culture.

2. Is the evidence in the record of behavior and comments about women and women employees attributed to executives and senior managers at Sterling sufficient to have established workplace norms for guiding the behavior of managers elsewhere in the organizational hierarchy?

Modeling the Leadership at Sterling

Employees model the behavior of leaders who have status and power because these attributes signal that the leaders' behavior has been rewarded. Thus the subordinate believes that behavior like that of the leader will result in similar rewards. Leaders are also watched and emulated because they have the power to determine whether and to what extent subordinates will be rewarded for their behavior. It follows then that the leaders at Sterling most likely to be modeled are those who have power and prestige,

indicating their behavior has been rewarded or at least sanctioned by the organization.

[REDACTED] Executive

[REDACTED]

[REDACTED] Executive

[REDACTED] Executive

[REDACTED] Executive

[REDACTED] Executive

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Executive

[REDACTED] Executive

[REDACTED]

[REDACTED]

[REDACTED] Executive

[REDACTED] Executive Executive

¹⁰ [REDACTED] Dep. at 24:18, 26:20-21.

¹¹Note: I understand that the various documents referenced in this report have also been produced in the productions in *EEOC v. Sterling Jewelers Inc.*, 08-CV-00706 (A)(M); for ease of reference and to avoid unnecessary duplication, I am citing to documents as they are identified in the arbitration or the EEOC litigation, but not both.

¹² [REDACTED] Dep. at 30:19-23.

[REDACTED]

[REDACTED]

[REDACTED] 14 Executi have also testified that they either acted as role models or followed the behavior of individuals above them that they considered role models. Executive testified that he tried to pattern his behavior after Mr. Executive, a Sterling Executive who recruited him, and who taught him by example.¹⁵ Executive testified that when he was a [REDACTED] Executive with three to four Executive reporting to him, he “considered himself a mentor.”¹⁶

Additional evidence that Sterling advocates leading by example come from the deposition testimony of Tom Parks, a senior Regional Human Resources Specialist responsible for investigating complaints regarding the conduct of Sterling employees including managers. He testified as follows:

“Q. The next slide is Bates Number 187724. It is entitled ‘Lead by Example.’ Is that a concept with which you are familiar in your field?

A. Yes.

Q. Is this ‘lead by example’ something you train managers on?

A. Yes.

Q. What is the concept? Can you elaborate on what ‘lead by example’ means?

A. Based upon the training that it provides?

Q. Yes.

A. ‘Lead by example’ means to me behaving professionally and setting the right example.

¹³ [REDACTED] Dep. at 39:8-21.

¹⁴ [REDACTED] Dep. at 73:8-9

¹⁵ [REDACTED] Dep. at 16:23 – 17:10.

¹⁶ [REDACTED] Dep. at 32:18 - 33:12.

Q. Is what you're training the managers about to be mindful that they—the way they behave may serve as a model for other employees who work with them?

A. I guess that would be the intent. I don't know how they received it.

Q. Right. I'm just talking about you, the way you are training managers on the subject.

A. Okay.

Q. Is that you were attempting to caution them that the way they behave may influence other employees who work with them, who may model their behavior after theirs?

A. Yes.

Q. This 'lead by example,' you said, I think, you used it in training store managers when they come to home office and you're assigned to the training, correct?

A. Yes.

Q. Is this concept of 'lead by example' something that you would apply to managers and executives in all levels?

A. Yes."¹⁷

It is therefore my opinion that the behaviors and comments of senior managers and executives at Sterling establish workplace norms and guide the behavior of managers elsewhere in the organizational hierarchy. Modeling takes place at Sterling. However, all too often what is modeled is improper conduct including Unwanted Sex-Related

Behavior. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Executive [REDACTED] 18 [REDACTED]

[REDACTED] Executive [REDACTED]

[REDACTED] behavior was clearly improper. Executive [REDACTED]

¹⁷ [REDACTED] Dep. at 112:21 – 114:9.

¹⁸ [REDACTED] Dep. at 157:17 – 163:3.

[REDACTED]

[REDACTED]

[REDACTED] Robinson and O’Leary-Kelly (1998) examined employees from 20 organizations and focused on how the antisocial behaviors of employees are shaped by the antisocial behaviors of their coworkers.²¹ Robinson and O’Leary-Kelly (1998) defined serious forms of antisocial behavior as stealing from one’s employer, insubordination, sabotage and Unwanted Sex-Related Behavior. They collected data from a broad range of occupations, including production workers, business consultants, general managers, administrative/clerical personnel, real estate agents, accountants, human resource professionals, sales personnel and paralegals. They found that the level of antisocial behavior exhibited by individuals was related to that exhibited by coworkers. They also found that dissatisfaction with coworkers was lower when the employees and coworkers exhibited similar levels of antisocial behavior.

The field position within Sterling that reports directly to the position of Vice President for Regional Operations is District Manager. Each Vice President for Regional Operations supervises several District Managers within the Vice President’s region. The scientific research on modeling cited above would lead one to expect that the inappropriate behavior of Executives [REDACTED] if unchecked would trickle down to District Managers. Consistent with this expectation, witnesses have given testimony describing the inappropriate behavior of District Managers at

²¹ Robinson, S. and O’Leary-Kelly, A. (1998) Monkey see, monkey do: the influence of work groups on the antisocial behavior of employees, *Academy of Management Journal*, Vol. 41, no. 6, 658-672.

Sterling. Examples of inappropriate comments and behavior alleged to have been exhibited by Sterling District Managers includes the following.²²

“During this same Annual Managers' Meeting, I was also approached by a male District Manager I knew who tried to kiss me. I told him I was not interested.” (Supplemental Declaration of Diane Acampora, para. 10)

“I also observed male Executives hitting on female District Managers, and male District Managers hitting on female Store Managers at the Annual Managers' Meeting. It seemed to me that at these meetings the men were on the prowl sexually, and the younger the better when it came to the females they pursued.” (Declaration of Timeen Adair, para. 26)

“I did have one occasion to personally experience sexual harassment on the job. This happened in approximately 2003 when I returned to work after having had surgery for breast implants. While in my store, my male District Manager, [REDACTED], commented on my implanted breasts in front of two other males, one of whom was a co-employee. This comment was totally unprovoked and unwelcomed. I reported it to my Store Manager, Donna Orosz, who made a complaint to HR on my behalf. I never heard from HR about the complaint and as far as I am aware nothing was ever done about it.” (Supplemental Declaration of Mandy Lee Alva, para. 8)

“During my employment at Sterling, I also observed that female employees experienced sexual harassment. For example, when I expressed interest in being promoted to District Manager [REDACTED], in approximately 2001 or 2002, he tried to get me to go out and discuss it with him over dinner and drinks, in a manner that appeared inappropriate to me. In the store he would come up to me and wrap his arms around me, and I would have to pull away. He told me not to tell his fiancée, who also worked for Sterling in the district. One time when a number of employees went out after work, he grabbed my butt in a sexual way.” (Declaration of Heather Ballou, para. 15)

“In approximately 2001 or 2002, District Manager [REDACTED], my coworker [REDACTED], other employees, and I went out to a TGI Friday's restaurant after a special sales event to celebrate its success. [REDACTED] proceeded to get very drunk that evening, and we were concerned about him driving drunk. At that time, [REDACTED] and I were about to become roommates, but I had not moved in to her apartment yet. We drove [REDACTED] back to her apartment so he could get home from there, since he lived in the next apartment complex. However, he wouldn't leave, and we told him he could sleep it off on the couch. [REDACTED] would not go to sleep, and another friend that was with us, [REDACTED], gave [REDACTED] more drinks in an attempt to get him to finally go to sleep. At some point in the early morning hours, I noticed the apartment door was open, and [REDACTED]'s puppy had gotten out. When I went out to look for the puppy, [REDACTED] went into [REDACTED]'s bedroom, locked the door, and

²² For additional examples, see Decl. of Donna Bartl, para 13; Supp. Decl. of Sally Bell, para. 8; Decl. of Katherine Christy, paras. 25-26, 31.

raped her. She told me that when she woke up, he was on top of her, and she couldn't push him off, and that he raped her. [REDACTED] apologized the next day, but also said he could get away with just about anything, like it was a joke. We didn't report the rape because we were afraid of retaliation." (Declaration of Heather Ballou, para. 16)

"On another occasion, I recall an incident at one meeting where an inebriated male District Manager was overtly kissing (making out with) a female Store Manager on a bus in which several of us were riding. On other occasions, I recall seeing male District Managers and female Store Managers going to motel rooms together. This type of overtly sexual activity was widespread and knowledge of it was common in the management ranks of the Company." (Declaration of Jennifer Clemens, para. 16)

"I have personal knowledge of the on-goings of this group of managers because I attended numerous work and social events with them. For example, I recall [REDACTED] Executive [REDACTED] saying, "We need to get the tits and ass out on the lease lines," when business was slow and he wanted to generate sales by putting the young girls in the front of the stores. In addition, former District Manager and current Executive [REDACTED], commented, "Why pay women more when they just get pregnant and have families? We need people who are hungry." I heard these types of sexist comments from higher level management employees all the time. In fact, the mantra of the former [REDACTED] Executive [REDACTED], was "give me a good looking young broad with nice tits and I'll show you sales!" (Declaration of Richard Sumen, para. 9)

Given my 30 years of experience assessing the accuracy of information provided by employees, it is my opinion that this testimony is credible. Note that the testimony quoted above is only a sample of the sworn testimony of over 220 current and former employees of Sterling. These employees come from various regions of the country. Their testimony includes firsthand accounts of the behavior of Sterling senior managers and executives. The testimony comes from supervisors as well as non-supervisors, males as well as females. Examination of the sworn declarations of these employees along with the factors I just mentioned as well as interviews with a sample of them, indicates that each witness has given independent testimony. The level of detail in the testimony, along with the consistency of the information provided, also lend credit to its accuracy. The actions alleged to have been committed in the declarations referenced above were attributed to District Managers, the group below Vice Presidents. The actions described constitute Unwanted Sex-Related Behavior. This behavior is alleged to have reached all

the way down to the store level. Here is an example of testimony from witnesses regarding the behavior of employees at the store level.

“I also experienced and witnessed sexual harassment while I worked for Sterling. For example, male Store Manager [REDACTED] regularly made sexually inappropriate comments about female customers and females who walked by our store, such as, “ooh, ooh, look at her. She’s hot. I would do her. Isn’t she hot?” (Declaration of Erica Caldwell, para. 7)

“[REDACTED] made comments about the bodies of the female employees at our store. For example, he talked about Sales Associate Stacy Dunkin’s ‘boobs.’ He said Sales Associate Alexandra Delgado was ‘fat.’ Soon after he came to our store, [REDACTED] said that he was going to ‘get rid of all the girls working here. We need cheerleaders and we’ll make more money.’” (Declaration of Erica Caldwell, para. 9)

Thus if the allegations are credible, which I believe they are, the result would be a climate and culture at Sterling in which female employees and their work are devalued when compared to male employees.

- 3. If the answer to Question 2 is yes, is the evidence in the record of behavior and comments about women and women employees attributed to executives and senior managers at Sterling capable of influencing the exercise of discretion in pay and promotion decisions made by managers with such responsibilities, given that:**
 - a. Women have held managerial positions at various levels of Sterling, as reflected in the workforce data available to you; and**
 - b. Sterling has had in place a policy prohibiting sex discrimination at all levels of its workplace and a policy prohibiting managers at all levels from fraternizing with employees under their direct or indirect supervision.**

The evidence in the record regarding behavior and comments about women generally and female employees at Sterling attributed to Executives and Senior Managers shows that knowledge of their behavior and comments was widespread. As an example, much of the Unwanted Sex-Related Behavior is alleged to have occurred at an Annual Managers' Meeting [REDACTED] that all managers were expected to attend. Thus, inappropriate behavior by Executives and Senior Managers could be seen by peers as well as a large number of lower-level managers from throughout the company down to and including Store Managers. Executives witnessed inappropriate behavior among each other. As an example, Mr. Executive [REDACTED] testified to seeing Mr. [REDACTED], the Executive [REDACTED] have more than three drinks in a single sitting at the Annual [REDACTED]

Managers' Meeting'.²³ Mr. Executive also testified that years ago he saw Mr. Executive visibly drunk at these meetings on several occasions.²⁴

There is considerable testimony from witnesses providing firsthand accounts of Managers and Executives at the Annual Managers' Meeting putting women in compromising positions by using their higher managerial status and behaving in ways that violated Sterling's code of conduct, including violations of its policy against Unwanted Sex-Related Behavior. As an example, Melissa Corey and Cathy Mantia testify as follow regarding their respective experiences at the Annual Managers' Meeting :

"I attended Sterling's Annual Managers' Meeting in 2002, 2003, 2005, 2006, and 2007. I regularly observed excessive drinking at these events, and they had a wild party atmosphere.

"The Annual Managers' Meetings had a reputation within the company for being a wild event in which male managers, supervisors, and executives could seek out sexual encounters with subordinate female Store Managers. I knew most of the male executives, Executives, and District Managers by sight. At the Annual Managers' Meetings I attended, I regularly observed these males hitting on female Store Managers, buying them drinks, dancing with them in a sexually suggestive manner, and otherwise sexually preying on them. This was done out in the open, and appeared to be encouraged, or at least condoned by the company." (Supplemental Declaration of Melissa Corey, paras. 10-11.)

"One night at Annual Managers', I was dancing on the dance floor with my female friends. While I was dancing, Executive approached me on the dance floor and tried to force me to dance with him. I told Mr. that I did not want to dance with him or any other male because I was married. I did not think it was appropriate to dance with any male, other than my husband. When I refused to dance with Mr., he grabbed my arm, and held me with both of his arms around me and started to dance fast. My friends, who included Colleen McCallie and two other females, noticed that I was trying to get Mr. away from me, and rushed over to help me pry Mr.'s arms away from me. Mr. became angry when my friends intervened to help me. A couple of females that Mr. was with earlier in the night also came over to get him away from me. These females, who I assume were friends of Mr., told him that he had too much to drink. I noticed that Mr. had blood-shot eyes, he was unable to walk straight, and he smelled very strongly of alcohol. I did not report Mr.'s

²³ Dep. at 185:9-12.

²⁴ Ibid. at 186:12-16 and 187:6-7.

inappropriate behavior because I feared that I would lose my job if I filed a sexual harassment complaint.” (Declaration of Cathy Mantia, para. 15.)

Such images of Executives and Senior Managers at the Annual Managers' send a powerful message as to the demeaning manner in which women in the company could be treated. These images send the message that women in the company were not as highly valued as men and could simply be used as sex objects.

Male Executives and Senior Managers were alleged to have engaged in such behavior when they returned to their respective regions, districts and stores. Given that these Executives and Senior Managers work closely with each other and the Senior Managers work closely with Store Managers, influence is channeled downward all the way to the store level. Executive, testified that he travels with his District Managers every six to eight weeks and meets with them as a group four times a year and that other Executives have similar schedules.²⁵ This shows the level of contact between Executives they supervise. This level of contact allows Executives to share and reinforce the company's values including a low regard for women employees when compared to men. District Managers in turn spend considerable time interacting with Store Managers who are in daily contact with store employees.

Jill Fundora and Ellen Purdy provide testimony that illustrates the degree to which the culture demeans women and is reinforced at the highest levels of the company can trickle down to the store level:

“In addition, there was also sexual harassment in the stores. When I first started working for Sterling in 2004, and I worked together as Sales Associates for Jared. In 2004, Mr. , who was married, told me he was having an affair with a female Sales Associate, . He would repeatedly refer to as “cunt”, “bitch”, and “slut in front of the other employees, including the Store Manager, . Mr. did not take any steps to stop Mr. 's harassing behavior. Instead, Mr. was promoted to Assistant Manager around 2007.” (Supplemental Declaration of Jill Fundora, para. 8.)

²⁵ Dep. at 28:8-20.

“District Manager [REDACTED] also engaged in sexist behavior toward the female employees he managed. Mr. [REDACTED] would constantly call me and other female employees “Honey.” This made me feel uncomfortable as it was a term of endearment reserved only for my husband. I tried to ignore it, however, as I could not afford to lose my job. Mr. [REDACTED] would also make disparaging comments about Sterling female employees. While Mr. [REDACTED] was working out of Store [REDACTED] making phone calls to other stores in the district, I heard Mr. [REDACTED] state on the phone, “let’s get rid of that Bitch.” Mr. [REDACTED] would also yell at, curse at, threaten, degrade, and put down Pamela Bennig, the female Store Manager at Store [REDACTED]. I would often see her in tears after meeting with Mr. [REDACTED]. It was so apparent that Mr. [REDACTED] had little respect for and looked unfavorably upon female employees that Debbi Cobb, a female employee who took my place as the Store Manager of the Marks & Morgan Jeweler’s store at West Shore Plaza in Tampa, Florida after I stepped down asked me shortly after meeting Mr. [REDACTED], “what is up with [REDACTED] not liking women?” This was her first impression of her new District Manager. I never observed Mr. [REDACTED] make disparaging comments or dole out harsh treatment to male employees.” (Declaration of Ellen S. Purdy, para. 8).

The Impact of Women In Managerial Roles

I have been asked to consider the degree to which women in managerial positions might mitigate the prevalence of Unwanted Sex-Related Behavior and the resulting devaluing of women. There has been considerable scientific research on the affect of gender proportionality and the extent to which Unwanted Sex-Related Behavior occurs. Willness et al. (2007) conducted a meta-analysis of research on the preexisting conditions and consequences of Unwanted Sex-Related Behavior in the workplace.²⁶ Willness et al. (2007) analyzed data from 41 scientific studies with a combined sample of approximately 70,000 participants. Their objective was to (a) determine what if any situational factors in an organization play a role in the occurrence of Unwanted Sex-Related Behavior and (b) what effects such behavior has on the victims Willness et. al., (2007) found a number of scientific studies showing that the effects of Unwanted Sex-Related Behavior on victims include lower job satisfaction as well as poor physical and mental health.²⁷

²⁶ Willness, C., Steal, P., and Lee, K. (2007) A meta-analysis of the antecedents and consequences of workplace sexual harassment, Personnel Psychology, 60, pp. 126-162.

²⁷ Ibid.

Given the serious negative effects of Unwanted Sex-Related Behavior, Willness et. al., (2007) studied how situational factors within an organization play a role in whether such behavior is minimized or facilitated. They relied upon the theoretical work of researchers who have studied Unwanted Sex-Related Behavior extensively to define the relevant situational factors.²⁸ In line with this research, Willness et al. (2007) studied two organizational characteristics. The first was the organizational climate for sexual harassment including those aspects of organizational climate related to tolerance of Unwanted Sex-Related Behavior and the existence of effective methods for remedying it. The second situational characteristic they examined was the gender composition of the organization. Gender composition was defined as the percentage of women in the organization.

Willness et al. (2007) found that organizational climate was the most important preexisting condition for the occurrence of Unwanted Sex-Related Behavior, with gender representation having a much smaller, but nonetheless significant, effect.²⁹ Their

²⁸ This body of work included for example, Gutek, B. (1985) *Sex and the Workplace*. San Francisco, Josey Bass; Hulin, C. (1993 April) A Framework for the study of sexual harassment in organizations: climate, stressors, and patterned responses. Paper presented at the 9th Annual Conference for the Society for Industrial and Organizational Psychology, San Francisco, CA; Fitzgerald, L., Gelfand, M., and Drasgow, F. (1995) Measuring sexual harassment: theoretical and psychometric advances. *Basic Applied Social Psychology*, 17, pp. 425-445; Fitzgerald, L., Drawgow, F., Hulin, C., Gelfand, M. and Magley (1997). Antecedents and consequences of sexual harassment in organizations: a test of an integrated model. *Journal of Applied Psychology*, 82, pp. 578-589.

²⁹ See for example Dekker, I., Barling, J. (1998). Personal and organizational predictors of workplace sexual harassment of women by men. *Journal of Occupational Health Psychology*, 3, 7-18. Glomb, T.M., Richman, W.L., Hulin C.L., Drasgow, F., Schneider, K.T., Fitzgerald, L.F. (1997). Ambient sexual harassment: An integrated model of antecedents and consequences. *Organizational Behavior & Human Decision Processes*, 71, 309-328. Hesson-McInnis, M.S., Fitzgerald, L.F. (1997). Sexual harassment: A preliminary test of an integrative model. *Journal of Applied Social Psychology*, 27, 877-901. Linn S.G. (2000). An investigation of sexual harassment and acquaintance rape experiences: Cognitive appraisals, internalization of gender-role ideologies, and negative psychological impact. *Dissertation Abstracts International: Section B: The Sciences and Engineering*, 60(8-B), 4233. Lundberg-Love P., Marmion S. (2003). Sexual harassment in the private sector. In Paludi, M., Paludi C.A., Jr. (Eds.) *Academic and workplace sexual harassment: A handbook of cultural, social science, management, and legal perspectives* (pp. 77-101). Westport, CT: Praeger/Greenwood. Morrow, P.C., McElry, J.C., Phillips, C.M. (1994). Sexual harassment behaviors and work-related perceptions and attitudes. *Journal of Vocational Behavior*, 45, 295-309. Murry, W.D., Sivasubramaniam, N, Jacques, P.H. (2001). Supervisory support, social exchange relationships, and sexual harassment consequences: A test of competing models. *Leadership Quarterly*, 12, 1-29. Niebuhr, R.E. (1997). Sexual harassment in the military. In O'Donohue, W. (Ed.), *Sexual harassment: Theory, research, and treatment* (pp. 250-262). Needham Heights, MA: Allyn & Bacon. Richman, J.A., Rospenda, K.M.,

findings regarding the effects of gender composition indicate that the percentage of women in supervisory and managerial positions does not influence the prevalence of Unwanted Sex-Related Behavior as much as the culture or climate of the organization. The mere presence of women in supervisory and managerial positions cannot, in and of itself be expected to reduce the prevalence of Unwanted Sex-Related Behavior.

The mitigating effect of women in management at Sterling is further diminished by the substantial drop in their representation as they progress up the management ranks.

Table 2 shows the representation of women in the various sales related positions at Sterling from 2004 to 2012. Table 2 shows that the representation of women decreases as managerial level increases. At the level of Vice President for example, the representation of women drops to an average of 32.4% compared to an average of 73.1% at the entry level position of sales associate. This indicates that the representation of women and therefore their influence in the company decreases markedly as one moves to the top positions.³⁰

Table 2: Gender Representation from Sales Associate to Vice President 2004-2012		
Position	Average Percent of Men	Average Percent of Women
Sales Associate	26.9%	73.1%
Department Manager	43.1%	56.9%
Assistant Manager	27.8%	72.2%
Store Manager	39.5%	60.5%
District Manager*	56.8%	43.2%
Vice President**	67.6%	32.4%

*This summary chart shows estimated DM information. There are approximately 236 individuals identified as District Manager. I have been able to confirm the gender of approximately 190 of those individuals. Claimants determined the gender of 27 individuals using their first name and have not been able to classify the remaining 16. The last column on this chart shows the maximum percent of females that could have held the District Manager position by assuming all of the unknown individuals

Nawyn, S.J., Flaherty, J.A., Feindrich, M., Drum M.L., Johnson T.P. (1999). Sexual harassment and generalized workplace abuse among university employees: Prevalence and mental health correlates. *American Journal of Public Health*, 89, 358-363. Williams, J.H., Fitzgerald, L.F., Drasgow, F. (1999). The effects of organizational practices on sexual harassment and individual outcomes in the military. *Military Psychology*, 11, 303-328.

³⁰ Executive ██████████ at Sterling but she seems not to be particularly effective in curbing the exercise of bias. For example, she appears to have been a poor role model for subordinates. Executive ██████████, testified that he has seen ██████████ visibly drunk at an Annual Managers Meeting (██████████ Dep at, 187).

were females.

**This information is from January 2002 through July 2012. The title VPRO was not used until February 2004. For the time period from January 2002-January 2004 the information represents VPs. Six months were added in 2004 since January represented the VP time period, but the remainder of 2004 was the period using the title VPRO.

Factors that Undermine Sterling's Policies Prohibiting Discrimination

Research demonstrates that the mere presence of policies prohibiting Unwanted Sex-Related Behavior is not sufficient to prevent or substantially reduce such behavior. The most critical determinant affecting the extent of Unwanted Sex-Related Behavior is the actual steps taken to prevent, investigate and enforce anti-harassment policies, not simply whether there is a paper policy. This research parallels and reinforces the research discussed above, that the mere presence of women in managerial ranks is insufficient to prevent discrimination or harassment. Of much greater importance is whether an employer by its actions has established a work environment where three organizational characteristics exist: (a) Women will feel free to make complaints alleging discrimination or harassment without fear of retaliation, (b) where such complaints will be taken seriously and effectively investigated, and (c) where offenders will be appropriately disciplined.”³¹ Willness et al (2007) found strong evidence in the research they analyzed that the three climate organizational characteristics are strongly related to the occurrence of Unwanted Sex-Related Behavior. The less these characteristics are present, the greater likelihood of Unwanted Sex-Related Behavior. These three characteristics were evaluated in terms of their existence at Sterling based upon my review of testimony from depositions and from other witnesses and from documents produced by Sterling in discovery.

³¹ Willness et al. cite Hulin et al. (1996) first as influence on sexual harassment. In, Stockdale, M. (Ed.) Sexual harassment in the workplace: perspectives, frontiers, and response strategies. Women and work: A research and Policy Series (Vol. 5 pp. 127-150) Thousand Oaks, CA: Sage and Williams, J., Fitzgerald, L. and Drasgow, F. (1999) The effects of organizational practices on sexual harassment and individual outcomes in the military. *Military Psychology*, 11, pp. 303-328.

Impact of Potential Retaliation on the Effectiveness of Sterling's Policies.

Testimony from witnesses indicates that they were very reluctant to complain about instances of Unwanted Sex-Related Behavior for fear of retaliation. The following testimony is illustrative of the extent to which female employees at Sterling feared retaliation if they complained about Unwanted Sex-Related Behavior by managers and executives, although there are many more examples.³²

Anna Battaglia-Lagalante testified as follows:

“All the female Sales Associates with whom I worked, including myself, would talk about what a pervert Mr. [REDACTED] [District Manager] was. However, we were also afraid of him. He was our District Manager, and we felt our jobs were in his hands. I never complained while employed by Sterling of this inappropriate behavior for fear of retaliation. I was a single mother at the time and could not afford to lose my job or have my hours or pay cut.” (Declaration of Anna Battaglia-Lagalante, para. 8)

Jessica Delorey gave the following testimony:

“Mr. [REDACTED] [District Manager] did not try to conceal his interest in me and the other employees noticed his blatant advances. He would always stand close to me when we were in the same room and would keep me near him when I was working. On or about November 2010, Mr. [REDACTED] lied and told Mr. [REDACTED] that I was going to call the TIPS line about his sexual harassment. Mr. [REDACTED] then called the store and asked for me and demanded that I step outside and call him back on my cell phone and not on the store's phone. When I called him back, he was furious and threatened to fire me if I called the TIPS. He stated, 'If you complain, I will take you out.' He also made clear to me that he would be informed if I called TIPS and that Mr. [REDACTED] was the employee that informed him that I was going to call TIPS. From that point on, Mr. [REDACTED] would constantly remind me of this episode and threaten my job, saying it would be my word against his.” (Declaration of Jessica Delorey, para. 13)

³² See the declarations of the following witnesses for additional examples of sworn testimony regarding retaliation: Decl. of Erica Caldwell, para. 12; Decl. of Deci Call, paras. 23-25; Decl. of Patsy Case, paras. 8, 10; Decl. of Sadie Cisneros-McMillan, para. 13; Jul. 10, 2008 Decl. of Melissa Corey, para. 26; Supp. Decl. of Susan Crump paras. 7, 9, 11, 13; Decl. of Donald Davison, paras. 11-13; Decl. of Jessica Delorey, para. 11; Decl. of Christine Ferreri, paras. 8, 10; Decl. of Elaine Gough, paras. 15, 17; Decl. of Kristin Henry, paras. 20-22; Decl. of Dean Huffman, para. 12; Decl. of Maria Arlene Josephsen, para. 16; Decl. of Jennifer Molina, paras. 12-13; Decl. of Paula Nieto, para. 17; Decl. of Vicki Osborn, para. 11; Decl. of Robin Parham-Finman, paras. 7, 12; Decl. of Rena Parsley, para. 10; Decl. of Ellen Purdy; paras. 10, 12; Decl. of Debbie Rayl, paras. 6, 13, 14, 16, 17; Decl. of Melissa Ricker, para. 11; Decl. of Sherry Roberson, para. 5-7; Decl. of Sandra Sargent, para. 20; Decl. of Anne Marie Scaletti, paras. 8, 12; Decl. of Diane Thielker, para. 6; Decl. of Steven Turek, para. 13; Decl. of Tina Waring, para. 9; Decl. of Joretta Whyde, para. 19; Decl. of Sherri Wilson, para. 13; and Decl. of Lindsey Zalanka, para. 8.

Witnesses feared that their complaints would not be confidential.³³ For example, Wendy Avila testified as follows:

“During my employment, I observed that calls to Sterling’s supposedly confidential complaint hotline, TIPS, were not in fact confidential. It was well known in the district that [then-store manager] Falta found out the identity of those employees who utilized the TIPS line to make complaints. In 2005 or 2006, I learned from Sarah Converse, that Falta had told her that she (Falta) had listened to the recording of an employee’s call to the TIPS line. Falta said she was able to identify the employee’s identity from her voice and accent.

“Because Falta was able to learn the identity of employees who utilized the TIPS line, it impacted whether employees would use it to bring complaints to the company’s attention. For example, in 2007 or 2008, [Sarah] Converse came to me about an offensive remark that Falta had made comparing gas prices to rape. I counseled Converse not to call the TIPS line because Falta would find out that she had made the complaint and possibly retaliate against her for that.” (Declaration of Wendy Avila, paras. 14, 15).

Sterling’s widespread failure to keep confidential the identities of employees who made complaints could have strongly discouraged others from lodging complaints about behavior that violated company rules, including Unwanted Sex-Related Behavior.

Sterling’s Failure to Discipline Managers

There is evidence that Sterling has failed to discipline managers against whom complaints of Unwanted Sex-Related Behavior have been made. The testimony of Natalyn Belanger provides one example.³⁴

³³ See the declaration of the following witnesses for additional testimony regarding lack of confidentiality of complaints. Note that this is not a complete list of these witnesses. Decl. of Patsy Case, para. 9; Decl. of Sadie Cisneros-McMillan (paras. 9, 15); Decl. of Angela Brown Coleman, para. 6; Decl. of Donald Davison, paras. 12-13; Decl. of Jennifer DiMenna, paras. 18, 23, 25; Decl. of Noreen Arena, para. 9; Decl. of Julia Highfill, para. 20; Decl. of Stefanie Loebertman, para. 6; Decl. of Anna Melton, para. 10; Decl. of Paula Nieto, para. 16; Decl. of Jackie Perrin, para. 10; Decl. of Lisa Ryan, paras. 4, 9; Decl. of Debra Shulman, para. 5; Decl. of Lindsey Zalanka, paras. 6-7.

³⁴ See the declarations of the following witnesses for additional examples of sworn testimony regarding complaints of discrimination that Sterling ignored: Decl. of Jeanette Digenarro, paras. 11-12; Supp. Decl. of Jill Fundora, paras. 9-11; Decl. of Kathleen Looney, paras. 4-8; Decl. of Kristen

“Within a week of beginning employment at our store, [REDACTED] sexually propositioned me, offering to be my ‘guy on the side.’ I declined his offer. That same week he tried to hug me after he had walked me out to my car in the parking lot one night after work. Again I told him I was not interested. I complained to store manager [REDACTED] about [REDACTED]’s behavior.... In March 2007, I called TIPS [The Company’s Complaint hotline] and complained about [REDACTED]’s behavior, and [REDACTED]’s lack of response.... Weeks went by and I heard nothing. I was not called back by the TIPS Operator, or questioned by anyone from Sterling’s Human Resources regarding my complaints. I then asked [REDACTED] what had happened and he told me that Human Resources told him that [REDACTED] had explained his side of the story....” (Declaration of Natalyn Belanger paras. 16, 20, 22).

This unresponsiveness generally undermines employee confidence in the prohibitions against discrimination, discouraging employees from lodging complaints in the first place and sending the signal that the company endorses or at least tolerates this kind of conduct.

Sterling Devotes Inadequate Resources to Handling Complaints

Evidence about the operation of the Human Resource office is instructive about the attention paid to each complaint it receives. Mr. Tom Parks, one of five Regional Human Resources Specialists for Sterling, testified that it is his responsibility to investigate concerns raised by field employees and assist them in resolving those concerns.³⁵ Mr. Parks also testified that it is his responsibility to investigate complaints of discrimination as well as other “level 3 complaints” which include allegations of sexual harassment. Each of the Regional Human Resources Specialists is assigned to, and responsible for, investigating complaints in several regions and supporting the Vice Presidents of those regions. Mr. Parks testified that he receives thousands of calls each year.³⁶

Documents provided by Sterling indicate that for the year 2006, for example, there were 19,321 total incoming and outgoing calls, of which 11,851 involved Level-3

Henry, para. 16, 19-22; Supp. Decl. of Donna Orosz, para. 3; Decl of Cathy Malone, paras. 20-21; Decl. of Vanessa White, para 22; Decl. of Lindsey Zalanka, para. 7.

³⁵ Parks Dep. at 37:11-12.

³⁶ Parks Dep. at 68:4-6]

matters. Among these calls, there were 1,519 involving complaints of sexual harassment.³⁷ Mr. Parks testified that the appropriate investigative process for handling a Level-3 complaint including sexual harassment involves the following steps:

- Listen to the allegations
- Review the allegations
- Review the facts that have been presented
- Notify the appropriate individuals
- Determine witnesses
- Conduct interviews
- Come to a finding
- Make recommendation³⁸

It is difficult to accept as credible, the notion that each complaint is properly investigated using the steps above, given the sheer volume of calls coming in and going out of that office. Moreover, the company reported that only eight percent of the sexual harassment complaints received in 2006 were investigated.³⁹ Even where the Human Resource Specialists conclude that some kind of discipline or corrective action is warranted, their views are merely recommendations to the managers in the field, who have the final say whether to accept those recommendations.⁴⁰ Mr. Parks testified that data is not kept on whether his recommendations following an investigation are taken and/or implemented. While he recalled that at least once during his seven-year tenure as Regional Human Resources Specialist he found a claim of sexual harassment to be substantiated, he could not recall the number of times he made such findings.⁴¹ Further, he could not recall whether he ever encountered a complaint alleging a violation of the

³⁷ Parks Dep. at Exhibit 7, SJI01050678.

³⁸ Ibid . at 71:9-13.

³⁹ Ibid . at Ex. 7.

⁴⁰ Ibid . at 72:1-3. 10:12-15.

⁴¹ Ibid. at 86: 20-87:5.

company's fraternization policy.⁴² In addition, Mr. Parks testified that he has gotten complaints from employees regarding retaliation from their supervisors for making a complaint but couldn't recall whether he substantiated any of these complaints.⁴³

Together, this evidence suggests that Sterling does not adequately investigate employee complaints or sanction employees who engage in multiple violations of the company's policy against discrimination. Sterling also does not adequately monitor and control retaliation against women who are the victims of such behavior. The scientific research described above indicates that, notwithstanding the presence of women in management and policies prohibiting sex discrimination and fraternization, an organizational climate, such as that at Sterling, facilitates Unwanted Sex-Related Behavior.

Compensation

The compensation offered to employees, as well as persons seeking employment, depends upon the perceived value of that person to the company. Therefore behavior by managers and senior executives that demeans women can influence their perceived value both at the time of hire and during the course of their employment.. This is particularly true if those making the compensation decisions are men who have considerable discretion in making those decisions.

The prevalence of Unwanted Sex-Related Behavior at Sterling, together with the climate and culture that facilitates it, derogates and/or devalues women (Berdahl 2007). The scientific research suggests that such behavior is motivated by the desire of male employees to protect the status they are afforded, simply by being men.⁴⁴

Senior Managers and executives at Sterling responsible for determining employee compensation have significant discretion in setting that compensation. As an example,

⁴² Parks Dep.. at 114: 17-19.

⁴³ Ibid. at 143:2-12.

⁴⁴ Berdahl, J. (2007) Harassment based on sex: protecting the social status in the context of gender hierarchy, *Academy of Management Review* Vol. 32, No. 2, pp. 641-658.

managers have had considerable discretion in how to value prior job experience, which the company regards as the basis for setting starting pay rates.⁴⁵ Before 2009, managers were given limited guidance as to which job experience should be given credit in setting starting pay rates and the amount of such credit to be given.⁴⁶ In 2009, Sterling instituted its Wage Rate Generator (WRG) that prescribed several types of prior job experience to credit in setting starting pay rates but, at least until 2012, it permitted the managers to choose one of three starting pay levels, base rate, base rate plus 2.5% or base rate plus 5% to offer new hires. Moreover, the background qualifications used to determine the level of pay must be interpreted by the District Manager before being placed in an algorithm that calculates the base rate.⁴⁷ The interpretation process is subjective and the options for starting pay that result, the three categories described immediately above, are left to the discretion of the District Manager. The culture of behavior toward women exhibited by Senior Managers and Executives will influence pay decisions such as those involved in setting starting pay rates because those decisions require managers to make judgments about the value of women to the company and compensate them accordingly.⁴⁸ This influence on pay decisions is present whether the compensation decision involves starting pay rates or increases in pay once hired. Although there are women in managerial positions who also make these decisions, they are a minority. The psychological literature indicates that they are more likely to model the behavior of their male peers and superiors than go against organizational norms and place their positions in jeopardy.⁴⁹ Therefore, the discretion in compensation decisions regarding starting pay rates and merit

⁴⁵ Luth I Dep. at 183:10-25 (prior job experience is “primary driver for setting starting pay”)

⁴⁶ Luth Dep. III (Apr. 4, 2013) at 52:6-54:17, 57:22-64:4 .

⁴⁷ Luth Dep I (November 12, 2012). at 153:23-154:17.

⁴⁸ See the declarations of the following witnesses for additional examples of sworn testimony regarding stereotyped remarks about women employees: Decl. of Susan Crump, para. 9; Decl. of Melinda Small, para. 10,20; Decl. of Donald Davison, para. 7, 15; Decl. of Dean Huffman, para. 7 Decl. of Richard Sumen, para 9; Decl. of Vanessa White Decl. para 11, 21; Decl. of Scott Smith, para. 5.

⁴⁹ See Robinson, S. and O’Leary, A (1998) at FN 21.

increases in pay make them vulnerable to the lower valuation of women conveyed by the demeaning behavior of higher-level managers.

Prohibiting Discussion of Pay

When considering whether there are gender-based differences in compensation at Sterling, it is important to note that the company has a formal policy of pay secrecy. That is, employees are only provided information about their own pay and are denied information, even upon request, about the pay levels of other employees. Such a policy is not inappropriate in and of itself.⁵⁰ However, it hampers women at Sterling from obtaining information that would permit them to compare their compensation with male co-workers. Mr. Steven John Becker, Senior Vice President of Human Relations at Sterling, gave the following testimony regarding sales personnel having access to the pay level of other employees:

“Q. The example I gave was if I’m a sales associate in a store and I have the suspicion that I’m being paid unfairly in my view compared to people working in the store along with me. And I come to my store manager and say, manager, I would like to know what these other people are being paid because I think I may be paid unfairly, and I want to make that kind of comparison, would the store manager be authorized to provide the pay of the coworkers, my coworkers?

A. I did misunderstand your question.

Q. Okay.

A. I believe that the store manager would not, but I’m not—in that example you would expect the employee to have a discussion with the store manager about their pay.

Q. Right. And if I said to the store manager I think I’m being paid unfairly, and the store manager said, well, actually I think you’re being paid fairly, and I said well I would like to know what these other people are being paid so I can make my own judgment about that, whether I’m being paid fairly, would the store manager be authorized to then give me the pay levels of the other sales associates in the store so I could make the comparison myself?

A. I don’t believe so.”⁵¹

⁵⁰ For a discussion of the costs and benefits of pay secrecy, see Collela, A., Paetzold, R., Zardkoohi, A., and Wesson, M. (2007). Exposing Pay Secrecy, *Academy of Management Review*, Vol. 32-No. 11, pp. 55-71.

⁵¹ Becker Dep. at 104:4-105:5.

Sterling's pay secrecy policy inhibits the ability of employees to detect and challenge pay differences between them.

Moreover, evidence from numerous witnesses demonstrates that Sterling inhibited employees from uncovering gender disparities in their pay by prohibiting them from discussing their compensation levels with each other. The testimony from over 200 witnesses who held supervisory and non-supervisory positions throughout the company is that they were warned it was a violation of company policy to discuss pay with other employees.⁵² Notwithstanding these widespread and detailed accounts of this policy, several Sterling executives have denied its existence. For example Tryna Kochanek, Senior Vice President, testified that Sterling has consistently allowed employees to discuss their pay with other employees over the past 26 years.⁵³ However, her denial is contradicted by detailed accounts attesting to the policy, such as that provided by Donna Bartl:

“I observed that Sterling had a policy prohibiting its employees from discussing their pay. For example, when I started working for Sterling I was told by District Manager Michelle McFarland that employees were not to discuss their pay with other employees, and that it was grounds for discipline. I was also told this by my Store Manager, Bob Mrock. He told me that I could get fired for talking about how much I made with other employees.

“As a Store Manager, I told my staff that they should not discuss their pay with other employees. In approximately 2001, soon after I became a Store Manager, an employee asked me for a raise. He told me that another

⁵² See the following declarations for examples of sworn testimony regarding Sterling's policy against employees discussing pay: Decl. of Daryl Shelton, para. 3; Decl. of Ellen Roland, para 4; Decl. of Susie Miller, para 3.

⁵³ Kockanek Dep. at 194:6-21.

employee was making more than him. I told him that he was not supposed to discuss pay with other employees, and that I was going to speak to the other employee about this infraction. I then called Sterling's Human Resources in Ohio regarding the policy. I spoke with Mary Ellen Mennett, and asked whether employees could discuss their pay with each other. Mennett replied absolutely not, that it was against company policy, and that an employee could be written up for violations of the policy.” (Declaration of Donna Bartl para 3 and 4).

Sterling's personnel records are consistent with the existence of this policy prohibiting employees from discussing their pay with each other. Diane Thielker, a part-time Sales Associate was issued a written reprimand in 2007 by her store manager Christopher Newton for discussing pay with other employees.⁵⁴ Mr. Newton in turn has given sworn testimony that he was instructed to issue the written reprimand by his District Manager.⁵⁵ In 30 years of practice as an Industrial Organizational Psychologist, I have never come across a situation in which an employee was given a written reprimand based on a nonexistent policy. In 2009, Maryellen Mennett, who at the time was Manager of Field Human Resources, sent an email to Michael Lynch, the Vice President of Employee Relations, indicating that Tom Parks, a Regional Human Sources Specialist, advised a store manager to inform a store employee (Evelyn Tucker) that it was against store policy to discuss wages. That advice given by Parks is likely to have been consistent with what the other Human Resource Specialists told managers in the stores. Mennett testified that she reviewed the investigative files of the Regional Human Resources Specialists and that she is satisfied that they apply interpretations of company policy that are consistent with

⁵⁴ Mennett Dep at Ex. 17.

⁵⁵ Decl. of Christopher Newton, para. 5.

each other.⁵⁶ I find it highly unusual that a Human Resources Specialist, whose responsibilities include providing advice to managers in the field regarding HR policy, would advise a manager that discussion of pay among store employees was a violation of company policy, if no such policy existed.

It is also noteworthy that Sterling produced over 600 sworn statements from employees regarding many of the allegations made by claimants. Although Sterling was notified in September 2005 that the claimants challenge, among other things, the company's policy prohibiting discussions about pay, not one of these 600 witnesses addressed whether such a policy existed even though the declarations were executed in 2006.⁵⁷ As these sworn statements failed to address the detailed evidence of this policy prohibiting employees from discussing their pay and made assertions that they were paid fairly without any evidence that they knew what other employees were paid, I found their statements unhelpful in supporting the claims of Sterling executives that the company did not have such a policy.⁵⁸ Based on the information I have reviewed, it is my opinion that Sterling (a) maintained a formal policy of pay secrecy denying employees access to information regarding the compensation of other employees and (b) maintained an unwritten policy prohibiting employees from discussing their pay with other employees.

⁵⁶ Menett Dep at 68:6-69:16.

⁵⁷ Notice of Discrimination by Jacquelyn Boyle, September 2005, Page 2, Para. 4, Notice of Charge of Discrimination by Carol King, Page 2, Para 2, and Notice of Discrimination by Lisa Follett, Page 3, para. 2.

⁵⁸ As I found these sworn statements to be little more than boilerplate accounts that failed to address the kind of detailed and consistent evidence of bias against women provided to me, they were of such little value that I did not include them with my report.

These practices, in effect, hampered women from determining whether the compensation system was biased in favor of men.

Promotions

Sterling defines a promotion as any movement of an employee from his or her current position into management or into a higher level of management, or movement of a manager into a higher volume store.⁵⁹ Sterling uses a system known as Succession Planning to make promotions at its stores.⁶⁰ This system has been in use consistently over the past decade. Rather than posting job vacancies and providing employees interested in promotion an opportunity to apply for particular vacancies, the Succession Planning System directs District Managers to identify employees they would like to promote, then ready them for promotion and finally, along with the Vice Presidents, to select them for promotion when vacancies arise.⁶¹ Sterling provides these District Managers with factors to consider in identifying and selecting candidates for promotion in the Succession Planning process, some of which are highly subjective, such as “team work,” “integrity” and “communication.”⁶² I found little evidence that these factors were anchored in observable behaviors or even assigned particular weights relative to the other, more objective factors to be considered in promotion decisions.⁶³ As such, the Succession Planning System introduces into promotion decisions opportunities for managers to exercise bias.

The opportunities for the introduction of bias in the promotion process are compounded by Sterling’s use of its Career Advancement Registry (CAR). The CAR was supposedly developed in 2007 as a way for employees interested in promotion to

⁵⁹ Luth II Dep. (11-13-12) at 7:22-8:19, 12:15-13:23.

⁶⁰ Luth II Dep. (11-13-12) at 69:3-70:18.

⁶¹Everton Dep. at 78:9-80:13.

⁶² Phase 2 District Manager Development Program Succession Management Leader’s Guide, SJI 35478-530 at 35493-95

⁶³ Becker Dep. at 164:24-165:3.; Luth I Dep. at 277:15-279:13.

register their interest and comprise a pool of candidates from whom promotions could be made, rather than post job vacancies. In practice, however, I found the evidence showed that managers have often manipulated the CAR, selecting the candidates they favored and then urging them to register with the CAR after their selection is all but final.

The testimony of Christopher Newton, a Sterling Store Manager from May 2000 until November 2010 when he left the company, among others expose the Career Advancement Registry as irrelevant once managers have cultivated and selected their favored candidates Mr. Newton testified as follows:

“At Sterling, promotion opportunities were not posted in the stores. In approximately 2008, Sterling began allowing employees to register their interest in jobs to which they might be interested in being promoted on the Career Advancement Register (“CAR”). As Store Manager, I encouraged employees to post on CAR, but I honestly did not think it was used for selecting candidates for promotion. From my experience, considerations for promotion were not influenced by whether an employee was registered on CAR. Throughout my employment at Sterling, I observed that promotions were made by the District Manager singling out employees to inform them of promotion opportunities. Not every employee in the store was informed of promotional opportunities. Even after CAR was implemented, the District Manger typically knew who would be promoted, irrespective of CAR. As Store Manager at store number [REDACTED] almost every time an employee was promoted, I was instructed by the District Manger to tell the employees who had been selected for promotion to post their interest on CAR. This meant the District Manger did not search for candidates to CAR, rather, employees were singled out for promotion first and then told to post on CAR.

“One way for female employees to gain the District Manger’s attention and increase the probability of obtaining a promotion was through a sexual relationship. In approximately 2002 or 2003, I observed that District Manager [REDACTED] and Store Manger [REDACTED] had a sexual relationship. [REDACTED] also told me that she and [REDACTED] had a sexual relationship. Their relationship was pretty public, in that they would touch each other while at the store. In approximately 2003 or 2003, I visited store number [REDACTED] and witnessed [REDACTED] siting on [REDACTED] lap at the store.” (Declaration of Christopher Newton, paras. 7-8.)⁶⁴

Rather than posting job vacancies and allowing interested candidates to apply and be considered in a transparent system in which managers making the selections are

⁶⁴ For additional examples of the CAR used in ways contrary to its stated purpose, see: Decl. of Jeanette Digenarro para. 6; Dec; of Charlene Harkness, para. 7; Decl. of Jasmina Hadzialic, para. 7.

accountable for the choices they make, Sterling's Succession Planning System and the CAR allow District Managers and Vice Presidents to identify and ultimately pre-select candidates they favor without any real accountability. And they use factors that are subjective and unweighted, making them susceptible to personal interpretation and the introduction of bias in the decisions made.

Many witnesses have given sworn testimony alleging that the promotion process is unfair. As an example, Theresa Lauria testified as follows:

"I was interested in promotion into management from the beginning of my employment with Sterling in April 2003. From that time, I told [District Manager Joanne] Falta and Store Manager Larry Greismer that I wanted to become a Store Manager. Falta and Greismer both told me that part of the benefit of being a Store Manager at Sterling was the opportunity to attend the annual Manger's Meeting in Florida. They both told me that if I worked hard, I could be a Store Manager.

There was a Store Manager position that I was qualified for, and would have been interested in, had I known of the opening before it was filled by a less qualified male. That position was the Store Manager position at the Kay store in the Crossgates Mall, in Albany, New York, filled in approximately June or July 2003. Sterling promoted Male Employee, who was hired after me as a Manger In Waiting, to that position. At that point, I had been an Assistant Manager for several months, and had helped train Male Employee in sales and in the repair department. Additionally I had 7 years' experience selling, designing, and repairing jewelry prior to working for Sterling. I did not learn of the opening at that Kay store in the Crossgates Mall until Falta announced that Male Employee would be the new Store Manager." (Declaration of Theresa Lauria, paras. 6-7).

Katie Jennings also testified regarding the difficulty that female employees have getting promoted. She testified as follows:

"I was interested in promotions and getting into management the entire time I worked for Sterling. I obtained a degree in Business Administration from the University of Toledo in 2002. I expressed interest in being promoted into management beginning with my first Store Manager at Osterman, Jeff Sandy, when I was first hired. I also expressed interest in getting into management at Sterling to Rick (LNU), my Store Manager at the JB Robinson store at the Southwyck Mall in Toledo, Ohio. Rick told me that to be promoted into management I had to meet the performance standards set for me, which I did. He appeared indifferent to my goal of being promoted into management, did not encourage my aspirations, or tell me of any promotional opportunities." (Declaration of Katie Jennings, para.6).

The Succession Planning System, therefore, relies on ill-defined and unweighted factors, some of which are highly subjective, that are applied to potential candidates by managers in a non-transparent process unrelated to any particular vacancies. This creates opportunities for the devaluing of women associated with Unwanted Sex-Related Behavior. The CAR added little to ensure the managers who make promotion selections are accountable for their decisions, as candidates are often pre-selected for vacancies rather than being fairly considered along with others interested in the same promotions. As a result, the promotional process is very susceptible to the forms of bias alleged by the complainants.

Conclusions

I have been asked to offer an opinion on three issues. The first issue is whether the behavior and comments of Sterling senior managers and executives can establish workplace norms that guide the behavior of managers elsewhere in the organizational hierarchy. I have examined sworn testimony from witnesses describing alleged comments and behavior attributed to Sterling Senior Managers and Executives. I have also examined and rely upon scientific literature detailing the effects leaders on the behavior of those subordinate to them. This literature shows that subordinates model the behavior of their leaders. The alleged behavior of employees beneath the level of senior managers and executives is guided by unwritten rules or norms communicated from those above them. Therefore I conclude that comments and behavior of senior managers and executives can establish norms that guide the behavior of managers elsewhere in the organizational hierarchy.

The second issue I have been asked to address is whether the evidence in the record of behavior and comments about women and women employees at Sterling attributed to senior managers and executives is sufficient to have established workplace norms for guiding the managers elsewhere in the organization. The evidence that I have examined in this case including sworn testimony of witnesses regarding the comments and behavior of senior managers and executives is replete with details of Unwanted Sex-Related Behavior that demeans and devalues women and women employees. I have also

examined deposition transcripts of Sterling managers and senior executives as well as documents produced by Sterling that indicate lack of sufficient controls and sanctions against Unwanted Sex-Related Behavior. This inappropriate behavior has been linked to executives and senior managers as well as managers and employees at the store level. It covers a time period that includes the relevant time period in this case. This pattern of behavior is alleged to exist up and down the management hierarchy at Sterling. Scientific research indicates that the existence of women in the workforce cannot, in and of itself, be expected to reduce the prevalence, and therefore the influence, of Unwanted Sex-Related Behavior. This evidence in the record leads me to conclude that it is sufficient to have established workplace norms for guiding managers elsewhere in the Sterling organization.

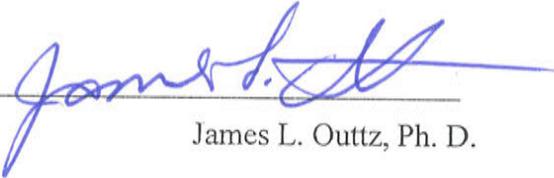
The final issue that I have been asked to address is whether the evidence in the record regarding the comments and behavior Sterling executives is capable of influencing the exercise of discretion in pay and promotions if the second question above must be answered in the affirmative.

The comments and behaviors attributed to Sterling senior managers and executives are demeaning to and devalue women in the company. This means that the underlying attitudes and organizational culture associated with this behavior will influence decisions regarding the worth of women to the company. Decisions regarding pay and promotions fall squarely within this category. It is my opinion therefore that the comments and behavior attributed to Sterling senior managers and executives have influenced the exercise of discretion in pay and promotions because these same management level individuals make those pay and promotion decisions and have considerable discretion in doing so.

Respectfully submitted,

6/20/2013

Dated



James L. Outtz, Ph. D.

Appendix 1

Previous Testimony

Previous Testimony

Listed below are the cases in which I have testified in the past four years:

Merton Simpson, et al., v. New York State Department of Civil Service, et al., United States District Court, Northern Division of New York, Case No. 04-CV-1182.
(Deposition)

Equal Employment Opportunity Commission, et al. v. Outback Steakhouse of Florida, Inc., et al., United States District Court for the District of Colorado, Case No. 06-cv-09135-EWN-BNB. (Deposition)

Shirley Williams v. Sprint/United Management Co., United States District Court for the District of Kansas, Case No. 03-2200-JWL. (Deposition)

Nilda Gutierrez, et al., v. Johnson and Johnson, United States District Court, District of New Jersey, Case No. 01-5302 (WHW). (Deposition)

Sharyn Stagi, et al., v. National Railroad Passenger Corporation, et al., United States District Court for the Eastern District of Pennsylvania, Case No. 2:03-CV-05702(JK).
(Deposition)

John Burke v. City of Bridgeport, et al., Superior Court Judicial District of Fairfield at Bridgeport, March 2008, Case No. CV 07-4021941 S. (Trial)

Sharon Phillips, et al., v. Washington Suburban Sanitary Commission, et al., Circuit Court for Prince George's County Maryland, Case No. CAL 04-12870. (Trial)

John Bolton v. City of Bridgeport, Superior Court Judicial District of Fairfield, Connecticut, Docket No. CV 04-0409828 S. (Trial)

Arthur L. Lewis, Jr., et al., v. City of Chicago, United States District Court Northern District of Illinois, Eastern Division, Case No. 98 C 559k. (Trial)

Johnny Reynolds, et al., v. Alabama Department of Transportation, et al., United States District Court Northern Division, Case No. CV 85-T-665-N. (Deposition & Hearing)

Appendix 2

Curriculum Vitae

VITAE

James L. Outtz, Ph.D.

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816 Connecticut Avenue, N.W.
Washington, D.C. 20006**

**Tel: 202-822-3882
Fax: 202-822-3884**

August 2012

JAMES L. OUTTZ, Ph.D.

Education

Ph.D. University of Maryland, College Park Maryland
Industrial/Organizational Psychology December 1976

M.S. Northeast Louisiana University, Monroe, Louisiana
Industrial Psychology January 1972

B.A. Northeast Louisiana University, Monroe, Louisiana
Sociology May 1969

Professional Honors

Delivered the keynote address at the 2011 Annual Conference of the Society for Industrial and Organizational Psychology South Africa (SIOPSA)

Invited by the U.S. Equal Employment Opportunity Commission to participate in a panel discussion to brief the Commission and interested parties on current employment testing policies and trends, the effect of employment tests on racial and ethnic minorities and how to design selection procedures that are effective without respect to race, color or other protected bases.

Invited to give a presentation on adverse impact and assessment at the 15th annual SHL conference in Pretoria, South Africa

Selected by the Board of Scientific Affairs of the American Psychological Association to give a one-hour Master Lecture in applied psychology at the 2007 American Psychological Association Convention in San Francisco, California.

Professional Affiliations

American Psychological Association

Fellow

Member - Division of Evaluation and Measurement

Member – Committee On Psychological Tests and Assessment (1990 through 1992)

American Psychological Association Division 14 The Society for Industrial and Organizational Psychology (SIOP)

Fellow

Past Member of the Executive Board

Currents and Past Committee Memberships:

Distinguished Professional Contributions Award Committee

Chair – M. Scott Meyers Award Committee

Ad Hoc Committee on Revision of the SIOP Principles for the Validation and Use of Personnel Selection Procedures

Ad Hoc Committee on Revision of the Uniform Guidelines

Program Committee for the Ninth Annual Conference

External Affairs Committee

The American Educational Research Association

Fellow

The International Personnel Management Association

Member

American Management Association

Member

Society for Human Resource Management

Member

Public Service

National Academy of Sciences, National Research Council

Member – Committee to Study Federal Aviation Administration Aviation Safety Inspector Staffing Standards (October 2004 to October 2006)

Member - Board on Testing And Assessment, Commission on Behavioral and Social Sciences (1992 through 1996)

Member – Committee on Workforce Needs in Information Technology (1999 to 2001)

Publications

- Outtz, J. (2011) Abolishing the Uniform Guidelines: Be Careful What You Wish For, Industrial and Organizational Psychology: Perspectives on Science and Practice, Vol. 4, No. 4 526-533.
- Outtz, J. (2010) The Unique Origins of Advancements in Selection and Personnel Psychology, In Zedeck, S. (Editor) APA Handbook of Industrial and Organizational Psychology, Washington, D.C. APA Books
- Outtz, J. (2010) Addressing the Flaws in Our Assessment Decisions: The Untold Story, In Scott, J. and Reynolds, D. (Eds) Handbook of Workforce Assessment: Selecting and Developing Organizational Talent, John Wiley and Sons.
- Landy, F. Gutman, A., and Outtz, J. (2010) A Sampler of Legal Principles in Employment Selection, In Farr, J. and Tippins, N. (Eds) Handbook of Employee Selection, New York, NY, Psychology Press – Taylor & Francis Group.
- Outtz, J. (2010) (Editor) Adverse Impact, Implications for Organizational Staffing and High Stakes Selection, New York, NY. Routledge, Taylor & Francis.
- Newman, D., Hanges, P. & Outtz, J. (2007). Racial groups and test fairness: Considering history and construct validity. American Psychologist, 62, 1082-1083.
- Outtz, J., (2005) Race Discrimination Cases: Common Themes. In Employment Discrimination Litigation: Behavioral, Quantitative and Legal Perspectives, Landy, F. (Ed) New York, New York, Jossey – Bass/Pfeiffer.
- Outtz, J. and Landy, F. (2005) Some Concluding Thoughts. In Employment Discrimination Litigation: Behavioral, Quantitative and Legal Perspectives, Landy, F. (Ed) New York, New York, Jossey – Bass/Pfeiffer.
- Cascio, W., Goldstein, I., Outtz, J., and Zedeck, S. (2004) Technical Issues in Staffing Decisions. In Test Score Banding in Human Resource Selection: Legal, Technical, and Societal Issues, Aguinis, H. (Ed.) New York, New York, Quorum Books.
- Outtz, J. (2004) The Psychology and Management of Work Force Diversity. A Book Review. Personnel Psychology. Vol. 57 No. 4 1041-1044
- Outtz, J., (2002) The Role of Cognitive Ability Tests in Employment Selection. Human Performance Vol. 15 No. (1/2) 161-171.
- Campion, M., Outtz, J., Zedeck, S., Schmidt, F., Kehoe, J., Murphy, K., and Guion, R. (2001) The Controversy over Score Banding in Personnel Selection: Answers to Key Questions. Personnel Psychology, Volume 54, No. 1, 149-185.
- Outtz, J. (1998) Affirmative Action: A Review of Psychological and Behavioral Research. A Book Review. Personnel Psychology, Volume 51, No. 1, 216-219.

Outtz, J. (1998) Testing Medium, Validity and Test Performance. In Beyond Multiple Choice: Evaluating Alternatives to Traditional Testing for Selection, Hakel, M. (Ed.) Hillsdale, New Jersey, Erlbaum Associates, Inc.

Outtz, J. (1997) Developing and Implementing Fair Systems of Assessment. Paper prepared for the Committee on Access Diversity and Civil Rights, National Skill Standards Board, Washington, DC

Zedeck, S., Cascio, W., Goldstein, I., and Outtz, J. (1996) An Alternative to Top-down Selection. In Fair Employment strategies In Human Resource Management, Barrett, R. (Ed.) Westport, Connecticut, Quorum Books.

Cascio, W., Zedeck, S., Goldstein, I., and Outtz, J. (1995) Selective Science or Selective Interpretation. American Psychologist Vol. 50, No. 10, 881-882.

Cascio, W., Goldstein, I., Outtz, J., and Zedeck, S., (1995) Twenty Issues and Answers about Sliding Bands. Human Performance Vol. 8, No. 3, 227-242.

Outtz, J. (1992) The Sliding-band Referral Method: An Innovative Procedure for Selecting or Promoting Employees. Employment Testing, Vol. 1, No. 10, 169-173.

Zedeck, S. Outtz, J. Cascio, W., and Goldstein, I. (1991) Why Do 'Testing Experts Have Such Limited Vision? Human Performance Vol. 4, No. 4 297-308.

Cascio, W. Outtz, J. Zedeck, S. and Goldstein, I., (1991) Statistical Implications of Six Methods for Establishing Cutoff Scores in Personnel Selection. Human Performance Vol. 4, No. 4, 233-64.

Outtz J., (1977) Racial Bias As a Contaminant of Performance Evaluation. Research Report #15, Contract #N00014-75-C-0884, Personnel and Training Research Programs, Science Division, Office of Naval Research, Arlington, Virginia.

Current Employment

Industrial Psychologist in Private Practice

Current and Previous Consultant Activities

Consultant December 2011 to Present	Cohen Milstein Sellers & Toll PLLC Washington D. C. Retained as expert for the plaintiff in the case of Jock V. Sterling Jewelers, Inc. (08 Civ. 2875 (JSR)). The case involves charges of employment discrimination in hiring, compensation and promotion on the basis of Gender for employees in sales- related positions.
Consultant November 2011 to Present	Akin Gump Strauss Hauer & Feld LLP Washington, D. C. Retained as expert for the defendant in the case of the United States Equal Employment Opportunity Commission v. Freeman Corporation. The case involves charges of discrimination on the basis of race, ethnicity and gender in the use of background checks in hiring and promotion decisions.
Consultant November 2011 to Present	United States Department of Justice New York, New York Retained as expert for the defendant in the case of Eugene Johnson & Evelyn Houser v. Locke et al. (10 Civ. 3105 (FM) (SDNY)). The case involves charges of racial discrimination with regard to the use of background checks by the U. S. Census Bureau in making hiring decisions.
Consultant June 2011 to Present	Messing, Rudavsky & Weliky, P.C. Boston Massachusetts Retained as expert for the plaintiff in the case of Pierce V. President and Fellows of Harvard College (U.S. District Court for the District of Massachusetts, Docket No. 1:11-cv-10419-RWZ). Retained to render an opinion regarding the validity, fairness and vulnerability to racial discrimination of the promotion practices maintained by the Harvard University Police Department.

<p>Consultant February 2011 to Present</p>	<p>Epstein Becker & Green, P.C. Washington, D.C.</p> <p>Retained on behalf of defendant, The Interpublic Group of Companies in the case of Maxime Jerome v. Interpublic Group of Companies, McCann Erickson Worldwide and Deutsch, Inc./EEOC Charge Nos. 520-2010-21111, 520-2010-01754, 520-2010-01756 . The case involves charges of racial discrimination in hiring.</p>
<p>Consultant July 2010 to Present</p>	<p>Baltimore Police Department & The Mayor and City Council of Baltimore Baltimore, Maryland</p> <p>Retained by mutual agreement of the parties in accordance with a settlement agreement the case of Hopson, et al. v. Mayor and City Council of Baltimore (Civil Action No. 04-3842 (D. MD)). Retained to evaluate the disciplinary policies, practices and procedures of the Baltimore Police Department with regard to fairness and racial discrimination and recommend changes if appropriate.</p>
<p>Consultant June 2010 to Present</p>	<p>Proskauer Rose LLP Washington, DC</p> <p>Retained on behalf of the defendant, CVS Pharmacy Inc., in the case of Rhode Island Affiliate American Civil Liberties Union (RI ACLU) vs. Caremark Corp. The case involves charges of discrimination based upon the Americans With Disabilities Act. It is before the Rhode Island Human Rights Commission (RICHHR #10 EMD 112-06/08, EEOC No. 16J-2101-00029).</p>
<p>Consultant December 2009 to June 2011</p>	<p>U.S. Equal Employment Opportunity Commission Chicago District Office</p> <p>Retained in the case of EEOC v. Abercrombie and Fitch to review selection processes and prior validation processes and results to determine validity; possible causes for disparate impact on minorities; and alternative selection procedures that would be less likely to result in disparate impact.</p>
<p>Consultant October 2009 to December 2010</p>	<p>Sanford Wittels & Heisler, LLP Washington, D.C.</p> <p>Retained as expert witness for the plaintiff in the case of Velez et al., v. Novartis to evaluate the policies and procedures at Novartis with respect to personnel management – including performance evaluations, compensation, and promotions to management. The case involved claims of gender discrimination in sales positions.</p>

Consultant
September 2009 to
Present

**United States Patent and Trademark Office
Alexandria, Virginia**

Retained as expert witness for the defendant in the matter of Binta Robinson vs. United States Patent and Trademark Office (PTO Case No. 08-56-41). Case involves a claim of racial and gender discrimination with regard to performance assessment and discipline.

Consultant
July 2009 to
June 2011

**Communications Workers of America
New York, NY**

Retained to conduct an analysis of the validity of a Technician Physical Performance Assessment Test. The purpose of the analysis was to determine whether the test inappropriately screens female applicants out of technician positions.

Consultant
February 2009
March 2011

**Akin, Gump, Strauss, Hauer & Feld, L.L.P.
Washington, D.C.**

Retained as expert witness for the defendant in the case of Equal Employment Opportunity Commission v. Allstate Insurance Company, (Civil Action No. 4:04CV01359 ERW (E.D. Mo.)). The case involved a claims of age discrimination with regard to a reduction in force.

Consultant
November 2008 to
Present

Commonwealth of Massachusetts

Retained as expert witness for the defendant in the case of Lopez v. Human Resources Division et al. (Case No. 07 –CA-11693JLT). Retained to review and analyze data and documents relevant to defending promotional examinations administered by the Commonwealth’s Human Resources Division to applicants for municipal police sergeant positions in Boston, and other municipalities in Massachusetts.

Consultant
November 2008
to September 2009

**Covington and Burling LLP
Washington, DC**

Retained to review materials and provide an expert opinion regarding the underlying litigation, its settlement and work performed under a consent decree in the case of Cynthia Carter McReynolds et al. v. Sodexo Marriott Services Inc. (Case No. 1:01-CV-00510 (ESH))

Consultant
August 2008 to
September 2009

**Miles & Stockbridge
Baltimore, Maryland**

Retained as expert witness on behalf of defendant Mack Trucks with respect to matters affecting or relating to a claim of gender discrimination brought by the Office of Federal Contract Compliance (OFCCP).

Consultant
December 2007 to
June 2011

**Gary, Williams, Finney, Lewis, Watson & Sperando, P.L.
Stewart, Florida**

Retained as expert witness for the plaintiff in the case of Merton Simpson et al. v. New York State Department of Civil Service (Case No. 04-CV-1182). The case involved claims of racial discrimination based on a statewide promotion examination.

Consultant
December 2007 to
July 2011

**Morgan, Lewis & Bockius LLP
Pittsburgh, Pennsylvania**

Retained as expert witness for the defendant in the case of Sharyn Stagi et al. v. National Railroad Corporation (Amtrak) (Civil Action No. 2:03-cv-5702, E.D. Pennsylvania). The case involved claims of gender discrimination with regard to promotions.

Consultant
December 2007 to
January 2010

**Baker Hostetler
Denver, Colorado**

Retained as expert witness for the defendant in the case of EEOC v. Outback Steakhouse (Case No. 06-cv-01935-EWN-BNB). The case involved claims of gender discrimination in promotions.

Consultant
November 2007 to
To June 2008

**Obermayer Rebmann Maxwell & Hippel LLP
Pittsburgh, Pennsylvania**

Retained as expert witness for the plaintiff in the case of Rupert, et al. v. PPG Industries, Inc. (Case No. 07-00705). The case involved claims of age discrimination with regard to reductions in force conducted by the company.

Consultant
April 2007 to
Present

**Social Security Administration
Baltimore, Maryland**

Retained as expert witness for the defendant in the case of Paulette L. Taylor v. Commissioner of Social Security Agency (Case No. SSA-02-0001; EEOC Case No. 120-2002-01441X). The case involves claims of racial discrimination against African Americans with regard to promotions.

Consultant
April 2007 to
Present

**Weil, Gotshal & Manges LLP
New York, New York**

Retained as expert witness for the defendant the case of McReynolds v. Merrill, Lynch, Fenner, Pierce and Smith, The case involves claims of race discrimination against African Americans with regard to compensation, promotion and other human resources practices for Financial Advisors.

Consultant
May 2006 to
December 2006

**Washington Suburban Sanitary Commission
Laurel, Maryland (WSSC)**

Testified as expert witness for the defendant in the case of Phillips v. Washington Suburban Sanitary Commission (Case No. 04-12879). The case involved current and former employees who sued WSSC alleging among other things that they were discriminated against in their compensation on the basis of race and ethnicity. The jury verdict was for the defendant with regard to the issues about which I testified.

Consultant
January 2006

**City of Bridgeport
Bridgeport, Connecticut**

Testified as expert witness for the defendant in the case of John Bolton et al. v. City of Bridgeport (3:04CV00670 (JBA)). The case involved a claim of racial discrimination by non-minority applicants for the position of firefighter. Plaintiffs contested an oral interview that was part of the selection process. The court ruled for the defendant.

Consultant
July 2005 to April
2006

Milberg Weiss Bershad & Schulman LLP
New York, New York

Retained as expert witness for the plaintiff in the case of Frank Warren, et al. v. Xerox Corporation. The case involved claims of race discrimination with regard to territory assignment, compensation and promotion for current and former sales employees. The case was settled prior to trial.

Consultant
October 2004 to
Present

Alcoa Inc.
Pittsburgh, Pennsylvania

Retained to develop an entry-level test for apprentice positions at the Company's Cleveland, Ohio facility. Retained to provide assistance in the development of a test battery for entry level manufacturing positions companywide as well as journey level electrical and mechanical positions.

Consultant
July 2004 to
September 2007

The Popham Law Firm, P.C.
Kansas City Missouri

Retained as expert witness for the plaintiff in the case of Shirley Williams vs. Novartis/United Management Company. The case involved claims of age discrimination with regard to a reduction-in-force carried out by the defendant.

Consultant
April 2004 to
January 2009

Weiner & Katz LLC
Livingston, New Jersey

Retained as expert witness for the plaintiff in the case of Bishop et. al. v State of New Jersey et. al. This case involved a claim of racial discrimination with regard to a promotion examination for the position of fire captain.

Consultant
April 2004 to
November 2005

**Lieff, Cabraser, Heimann
& Bernstein, LLP**
San Francisco, California

Retained as expert witness for the plaintiff in the case of Gonzalez et al. v. Abercrombie & Fitch Stores, Inc., A&F California, LLC and A&F Ohio, Inc. The case involved a claim of racial discrimination in hiring. The case was settled prior to trial.

Consultant
March 2004 to
June 2004

U.S. Department of Commerce
Office of General Counsel
Washington, DC

Retained as expert witness for the defendant in the case of Janet Howard v. Donald L. Evans, Secretary U.S. Department of Commerce. The case involved a claim of racial discrimination by African American employees with regard to the Department of Commerce performance appraisal system. I was retained to evaluate the adequacy of plaintiff expert's report.

Consultant
March 2004

City of Bridgeport
Bridgeport, Connecticut

Testified as expert witness for the defendant in the case of John Bolton v. City of Bridgeport (CV 04-0409828 S). The case involved a claim of racial discrimination by non-minority applicants for the position of firefighter. The court ruled for the defendant.

Consultant
January 2004

City of Chicago
Chicago, Illinois

Testified as expert witness for the defendant in the case of Arthur Lewis Jr. et al., v. City of Chicago (United States District Court Northern District of Illinois, Eastern Division, Case No. 98 C 5596). This case involved a claim of racial discrimination in the hiring of entry level firefighters. The District Court ruled in favor of the plaintiff.

Consultant
January 2003 to
October 2003

Fisher & Phillips LLP
Atlanta, Georgia

Retained to conduct an evaluation of the human resources practices of Matsushita Communication Industrial Corporation of U.S.A. ("MCUSA") relating to pay and promotion for its hourly, salaried-nonexempt, supervisory and management employees.

Consultant
November 2002 to
June 2011

**Paul, Weiss, Rifkind,
Wharton & Garrison**

Retained as expert witness for the defendant in the case of Gutierrez, et al. v. Johnson & Johnson, Inc. The case involved claims of racial discrimination by African American and Hispanic salaried employees. The District Court ruled for the defendant.

Consultant
November 2002

**City of Chicago
Chicago, Illinois**

Testified as expert witness for the defendant in the case of Horan et al. v. The City of Chicago. I offered an opinion regarding the proper interpretation and use of the results of an entry-level firefighter examination. The District Court ruled for the defendant.

Consultant
April 2002 to
March 2003

**Publix Super Markets, Inc.
Lakeland, Florida**

Retained to provide assistance in the development and validation of modifications to a selection battery for Assistant Department Manager and Department Manager positions.

Consultant
April 2002 to
December 2003

**Arent, Fox, Kintner, Plotkin & Kahn, PLLC
Washington, D.C.**

Retained as expert for the defendant in the case of Wicks, et al., v. Metso Paper USA. This case involved a complaint of age discrimination by former employees at the Clark Summit facility of the Beloit Company who were not selected for retention by Metso Paper USA after its acquisition of the Clark Summit facility.

Consultant
October 2001 to
August 2002

**Epstein Becker & Green, P.C.
Washington, D.C.**

Retained as expert witness for the Defendant in the case of Thornton et al., v. ICMA Retirement Corporation. This case involved a complaint of racial discrimination by current and former African American employees.

Consultant
July 2001 to
December 2001

Cohen, Milstein, Hausfeld & Toll, P.L.L.C.
Washington, D.C.

Retained as expert for the plaintiff in the case of Donaldson et al. v, Microsoft (No. C00-1684-P). This case involved claims of racial discrimination by African American employees who alleged among other things discrimination in compensation, promotion as well as retaliation.

Consultant
February 2001 to
December 2002

City of San Francisco
San Francisco, California

Retained to develop and validate a Firefighter examination for the City of San Francisco Fire Department.

Consultant
February 2001 to
July 2006

Bridgeport Civil Service Commission
Bridgeport, Connecticut

Retained to develop and validate an examination for the position of Firefighter.

Consultant
January 2001 to
October 2003

Thelen, Reid and Priest, LLP
Washington, D.C.

Retained to monitor, review, and provide input to the Bureau of Alcohol, Tobacco, and Firearms regarding the development and validation of a promotion process for First-Level Supervisor positions.

Consultant
January 2000 to
December 2003

Gordon, Silberman, Wiggins and Childs
Birmingham, Alabama

Retained as expert for the plaintiff in the case of Johnny Reynolds et al. v Alabama Department of Transportation (Case No. CV 85-T-655-N). This case involved monitoring a consent degree entered by plaintiff and defendant regarding the selection, and promotion practices of the Alabama Department of Transportation

Consultant
January 2000 to
December 2001

Spriggs and Davis, PA
Tallahassee, Florida

Retained as expert for the plaintiff in the case of Middleton, et al., v. Publix Supermarkets, Inc.

Consultant
March 2000 to
December 2001

Bridgeport Civil Service Commission
Bridgeport, Connecticut

Retained to develop and validate promotion examinations for the positions of Police Sergeant and Police Detective.

Consultant
July 1999 to
September 2001

City of San Francisco
San Francisco, California

Retained to develop an Officer Candidate Promotion System for the City of San Francisco Fire Department.

Consultant
June 1999 to
January 2003

CSX Transportation
Jacksonville, Florida

Retained to validate tests and selection procedures used for hiring and promotion in several departments including Train and Engine Service, Yardmaster, Dispatcher, Mechanical Operations, and Engineering.

Consultant
June 1999 to
August 2002

NAACP Legal Defense Fund
Los Angeles, California

Retained as expert for the plaintiffs in the case of Rios, et al., v. Regents, et al. Retained to evaluate the admissions procedure of the University of California at Berkeley.

Consultant
December 1998 to
Present

Federal Deposit Insurance Corporation
Washington, D.C.

Retained to provide expert services to the Legal Division of the Federal Deposit Insurance Corporation (FDIC) regarding employment discrimination matters. Responsibilities include conduct of validation studies regarding selection and promotion procedures used by the organization; conduct of job analyses and development of an assessment center for Financial Institution Specialist.

Consultant
December 1998 to
January 2000

Vladeck, Waldman, Elias and Engelhard, P.C.

Retained as expert for the plaintiffs in the case of Rodolico v. Unisys Corporation. Responsibilities included an evaluation of a reduction in force carried out by Unisys with regard to engineers employed by Company.

Consultant
August 1998 to
December 2001

**City of San Francisco
San Francisco, California**

Retained to develop a Firefighter Cadet Program to replace the Firefighter selection procedures used in the past. Project included the development and validation of screening procedures for entering the program, program content, and methods of evaluating performance.

Consultant
July 1998 to
January 2001

**Arter and Hadden
Washington, D.C.**

Retained as expert witness for the defendant in the case of Beebe, et al., v. the National Association of Social Workers Inc. (NASW). Responsibilities included evaluation of the procedures used by the NASW to select persons for senior management positions.

Consultant
June 1998 to July
2005

**Arent, Fox, Kintner, Plotkin and Kahn
Washington, D.C.**

Retained as expert for the defendant, INA Bearing Company Inc., in response to a Show Cause Notice from the U.S. Department of Labor, Office of Federal Contract Compliance. Responsibilities include an analysis of the Company's selection procedures for specific craft positions.

Consultant
March 1998 to
Present

**Vladeck, Waldman, Elias, and Engelhard, PC
New York, New York**

Retained as expert for the plaintiff in the case of Lott v. Westinghouse. Responsibilities include evaluation of the performance appraisal and promotional procedures of the Westinghouse Company.

Consultant
November 1997 to
January 2001

**Perkins Coie
Seattle, Washington**

Retained on behalf of The Boeing Company to provide recommendations regarding the validity, fairness, and operational use of the Company's First-Level Management Selection System.

Consultant
October 1997 to
January 1999

Hermina Law Group
Laurel, Maryland

Retained as expert for the plaintiff in the case of Richard v. Bell Atlantic Corporation, et al. Responsibilities include review of the testing and promotion procedures of the Bell Atlantic Corporation.

Consultant
July 1997 to
November 1997

National Skills Standards Board
Washington, D.C.

Retained to prepare a paper on alternative methods of assessing national skills standards.

Consultant
May 1997 to
June 1997

Gordon, Silberman, Wiggins and Childs
Birmingham, Alabama

Testified as expert witness for the plaintiff in the case of Moore, et al., v. Norfolk Southern. My testimony addressed the appropriateness of using validity generalization as a strategy for establishing the job relatedness of cognitive ability tests used in a clinical assessment process, and the feasibility of alternatives to the cognitive ability tests used by the defendant. I demonstrated that there were alternatives to the defendant's cognitive ability tests that had less adverse impact and equivalent validity.

Consultant
June 1996 to
June 1997

The George Washington University
Washington, D.C.

Retained to provide consultation with regard to implementation of a reduction in force (RIF) at the George Washington University Medical Center. Responsibilities included examination of implementation decisions from a psychometric standpoint.

Consultant
January 1996 to
May 1997

Vladeck, Waldman, Elias, and Engelhard. P.C.
New York, New York

Retained as expert for the plaintiff in the case of Krueger v. N.Y. Telephone. Retained to examine the report of defendant's expert regarding a downsizing plan implemented by the New York Telephone Company. Responsibilities included evaluation of the conclusions in the report, providing assistance in preparing for defendant expert's deposition, and preparing a rebuttal report.

Consultant
December 1995 to
March 1999

Williams and Connolly
Washington, D.C.

Retained to evaluate the work necessary to validate certain CSXT Railroad Company employment practices in connection with pending litigation.

Consultant
November 1995 to
May 1997

City of Columbus
Columbus, Ohio

Retained to provide consultant services to complete a job analysis for the position of Firefighter and, if appropriate, make recommendations to modify the City's testing method. Responsibilities included meeting with key City personnel regarding the project; providing job analysis training to Civil Service Commission staff; reviewing job analysis data; providing written comment to the Civil Service Commission regarding acceptability of the work, and recommending possible modifications to the Firefighter examination.

Consultant
August 1995 to
June 2001

United States Department of Justice
Federal Bureau of Investigation
Washington, D.C.

Retained to serve on a three-person Review Committee, under the terms of a settlement agreement, to monitor and comment upon the proposals and recommendations of experts hired by the FBI. Responsibilities include evaluation of proposals and recommendations of experts with regard to promotion practices of the Agency specifically relating to the Career Development Program, Performance Appraisal Report System, Management Appraisal Program, and Initiation of Disciplinary Proceedings.

Consultant
June 1995 to
January 2000

O'Melveny and Myers
Washington, D.C.

Retained as expert for the defendant, Ford Motor Company, in employment discrimination litigation. Responsibilities include performing statistical and other analyses of employment data of the Ford Motor Company and Ford Motor Credit.

Consultant
March 1995 to
April 1997

**Cohen, Milstein, Hausfeld and Toll
Washington, D.C.**

Retained as expert for the plaintiff in the case of Roberts v. Texaco, Inc. Responsibilities included review of Texaco's selection and promotion policies and practices to determine whether they are excessively subjective and inadequately audited or monitored and, therefore, are likely to have an adverse impact on African American employees.

Consultant
February 1995 to
May 1995

**Koskoff, Koskoff and Bieder
Bridgeport, Connecticut**

Retained as expert witness for the intervening defendants in the case of Burke, et al., v. Bridgeport Civil Service Commission, et al. I testified regarding the development and validation of a written examination for Police Officer and the use of a banding procedure to interpret test scores.

Consultant
December 1993 to
December 1994

**City of Columbus Civil Service Commission
Columbus, Ohio**

Retained to advise the Civil Service Commission with respect to professionally acceptable strategies for test grading and application certification. Also retained to prepare a position paper on "Banding" as a selection strategy and provide recommendations to City officials.

Consultant
October 1993 to
September 1995

**Potomac Electric Power Company
Washington, D.C.**

Retained to (a) develop selection procedures for all first-level supervisor positions, (b) develop alternative selection procedures for entry-level positions, and (c) evaluate and revise the qualification card program which determines progression into skilled craft positions.

Consultant
September 1993 to
January 2010

City of Chicago
Chicago, Illinois

Retained to develop and validate a written examination for the position of Firefighter. The examination is administered to approximately twenty-five thousand applicants. It incorporates audiovisual technology as well as nontraditional item format designed to enhance validity and reduce adverse impact.

Consultant
June 1993 to
March 1995

City of Detroit
Detroit, Michigan

Retained to develop promotion examinations for the positions of Police Lieutenant, Sergeant, and Investigator in the Detroit Police Department.

Consultant
February 1992 to
May 1992

CORE Corporation, Inc.,
Berkeley, California

Retained to work with the firm to develop and validate an entry-level Firefighter examination for the City of San Francisco.

Consultant
January 1992 to
January 2000

U.S. Department of Justice
Federal Bureau of Investigation
Washington, D.C.

Retained to conduct a review and analysis of the Career Development Program for Mid-Level Managers (GS-14 and GS-15) and propose modifications.

Consultant
July 1991 to
December 1991

Arnold and Porter
Washington, D.C.

Retained (with agreement of the Federal Bureau of Investigation) to assist the law firm in preparation for possible litigation on behalf of a class of African American FBI agents who claimed that the FBI discriminated against them on account of race in violation of Title VII of the Civil Rights Act of 1964.

Consultant
June 1991 to
January 1995

**East Bay Municipal Utility District
Oakland, California**

Designed and developed an entry-level test for apprentice positions in the Plant and Equipment Maintenance Division of the Maintenance Department. The positions included Electrical Worker, Mechanical Maintenance Worker (including auto mechanic), Carpentry Worker, and Instrument Worker. A new video-based testing format was used to present test information. This format produced greater fidelity between the test and the jobs. Results showed good variance, high reliability, and a significant reduction in test score differences across race, ethnicity, and gender.

Consultant
April 1991 to
January 1996

**United States Department of Justice
Civil Rights Division
Washington D.C.**

Retained as expert witness for the plaintiff in the case of United States v. State of New Jersey (CV 950-73) to review validation evidence, determine whether fire service tests are job-related, and possibly testify regarding findings.

Consultant
May 1992 to
June 1998

**United States Department of Justice
Civil Rights Division
Washington D.C.**

Retained in the case of United States v. Nassau County to assist in the design, development, and validation of a new device for use by Nassau County in the selection of candidates for the position of Police Officer. Responsibilities also included consultation with U.S. attorneys assigned to the case, and testimony by deposition and/or at trial as required.

Consultant
February 1991 to
March 1991

Arent, Fox, Kintner, Plotkin and Kahn

Retained as expert witness for the defendant in the case of Edward L. Jolly v. Northern Telecom Inc. (Civil Action No. 90-322-A). Retained to testify regarding the type of evaluation required for an industrial psychologist to reach the expert opinion that one employee is more qualified than another for promotion to a mid-level management position.

Consultant
November 1990

City of San Francisco
San Francisco, California

Testified as expert witness for the defendant in the case of Officers for Justice, et al., v. Civil Service Commission of the City and County of San Francisco. This case involved the contention by plaintiffs that a system of test score interpretation called “sliding bands,” which I developed, is statistically inappropriate and does not represent a reasonable alternative to the use of test scores in strict rank order. The district court ruled for the defendant. The decision was upheld by the Ninth Circuit Court of Appeals. In its opinion, the Ninth Circuit Court of Appeals wrote

“... we find that the efforts exerted in this process culminated in a unique and innovative program which succeeds in addressing past harms to minorities while minimizing future harmful effects on non-minority candidates. The successful efforts of all parties and the district court in reaching this resolution are to be lauded.”
(Officers for Justice v. Civil Service Commission of the City and County of San Francisco, Nos. C-73-0657 RFP and C-77-2884 RFP, N.D. Cal., 21, August 1991)

Consultant
September 90 to
September 1991

City of Huntington
Huntington, West Virginia

Retained to review the City of Huntington's Civil Service Rules and selection procedures for hiring Police Officers and Firefighters, provide an opinion regarding the validity of the procedures, and determine whether the adverse impact of the procedures could be reduced.

Consultant
April 1990 to
April 1991

NAACP
Baltimore, Maryland

Retained to provide expert opinion regarding the validity of the College Level Academic Skills Test (CLAST). This test was being used by the State of Florida to measure the achievement level of third-year college students pursuing a teaching career.

Consultant
December 1989

City of Bridgeport
Bridgeport, Connecticut

Testified as expert witness for the defendant in the case of Bridgeport Guardians Inc., Hispanic Society Inc., v. City of Bridgeport (Civil Action No. B-89-547, TFGD), U.S. District Court, District of Connecticut. The case involved a charge by the plaintiffs that the promotion process for the position of Police Sergeant in the Bridgeport Police Department had adverse impact against Black and Hispanic candidates, and was not valid. I gave testimony that in my opinion the promotion process did not have an adverse impact against these groups and was valid.

Consultant
December 1989

Bramhall, Duncan and Ohm
Attorneys at Law
Little Rock, Arkansas

Testified as expert witness for the plaintiff in the case of Grady Anthony v. City of Little Rock (Case No. LR-C-88-236), U.S. District Court, Eastern District of Arkansas, Western Division. The case involved a charge by the plaintiff that the procedure used to set the cutoff score on a Police Lieutenant examination was neither valid nor psychometrically correct. The court ruled that while plaintiff's arguments were plausible, and the defendant's promotion procedure was "far from perfect," it did meet the requirements of the Uniform Guidelines and was valid and reasonable.

Consultant
August 1989 to
December 1989

Congress of the United States
Office of Technology Assessment
Washington, D.C.

Retained to assist the Office of Technology Assessment in the evaluation of the validity and reliability of paper-and-pencil integrity tests. Assignment included review of validation studies and submission of a written report of my findings.

Consultant
July 1989 to
January 1998

United States Department of Justice
Federal Bureau Investigation
Washington, D.C.

Served on a committee with Drs. Robert Guion and Charles Lawshe to review and monitor the development of selection procedures for the positions of Supervisory Fingerprint Examiner and Latent Fingerprint Specialist.

Consultant
May 1989 to
June 1989

**District of Columbia Public Schools
Washington, D.C.**

Retained to serve as a member of a technical review committee for the District of Columbia Public Schools' Teacher Content Knowledge Assessment Program. The committee's task was to review the procedures used to develop and validate an entry-level teacher certification test.

Consultant
March 1989 to
July 1989

**United States Department of Labor
Office of Federal Contract Compliance
Washington, D.C.**

Retained to review validation studies from the New York Telephone Company to determine whether they were in compliance with the standards set forth in the Uniform Guidelines on Employee Selection Procedures. The validation studies were conducted to determine the validity and fairness of tests used to screen applicants for the position of Service Representative, as well as positions in entry-level and outside crafts.

Consultant
February 1989 to
January 1997

**East Bay Municipal Utility District
Oakland, California**

Retained to lead a team of three independent experts (James Outtz, Wayne Cascio, and Sheldon Zedeck) mutually agreed upon by the parties to perform the work of the "Testing and Selection Expert" in the Case of McIntosh, et al., v. East Bay Municipal Utility District. The Team's responsibilities included (a) review of the company's policies, practices and procedures with regard to testing and selection, (b) identification of practices and procedures not in compliance with the Uniform Guidelines on Employee Selection Procedures, and (c) formulation of recommendations to bring such practices and procedures into compliance.

Consultant
February 1989 to
January 1996

Giant Food Inc.
Landover, Maryland

Retained to conduct a criterion-related validation study of the company's selection procedure for the position of Retail Trainee. Retail Trainee is a first-level management position in the company's food stores. Responsibilities included research methodology, as well as reporting the results. Since completing this project, I have been retained to revise the selection procedure and conduct a second validation study.

Consultant
December 1988 to
February 1989

New York State Department of Civil Service
Albany, New York

Developed and conducted two three-day training courses on contemporary approaches to reducing adverse impact in employment selection procedures. The training courses were presented to sixty members of the department's professional test development staff.

Consultant
February 1988 to
May 1990

CORE Corporation
San Francisco, California

Retained to join a committee of testing experts in the development and validation of selection procedures for positions from Firefighter to Battalion Chief in the San Francisco Fire Department. This project included conduct of a job analysis and the development of written tests as well as job simulations.

Consultant
January 1988 to
September 1989

City of Baltimore
Baltimore, Maryland

Retained to provide technical assistance in the development and validation of a promotion procedure for the position of Fire Battalion Chief in the Baltimore Fire Department. Project included conduct of a job analysis and the development of a written test and job simulations.

Consultant
October 1987 to
January 1998

City of New Orleans
New Orleans, Louisiana

Retained to provide technical assistance with regard to the development and validation of selection procedures for the positions of Police Officer and Police Lieutenant, in accordance with an agreement made by the City of New Orleans in the case of Williams v. City of New Orleans (Civil Action No. 73-649). In accordance with the settlement, the City of New Orleans agreed to consult with an Industrial Psychologist designated by plaintiffs.

Consultant
October 1987 to
April 1993

City of New York
New York, New York

Retained to provide technical assistance with regard to the development and validation of selection procedures for the positions of Police Lieutenant and Sanitation Supervisor. The project included conduct of a job analysis as well as development of written tests and job simulations.

Consultant
August 1987 to
January 1997

Amalgamated Transit Union Local 998
West Allis, Wisconsin

Retained to evaluate the Milwaukee County Transit System's selection procedure for the position of Shipper/Receiver and to offer an opinion as to its validity.

Consultant
July 1987 to
January 1989

Lopatin, Miller, Freedman, Bluestone, Erlich, Rosen and Bartnick
Detroit, Michigan

Retained as expert witness for the plaintiff in the case of Hugely, et al., v. General Motors Corporation, U.S. District Court, Eastern District of Michigan (Civil Action No. 83 C.V. 2866 DT). I was retained to evaluate the performance appraisal system used by General Motors for certain managerial positions and to offer an opinion as to its validity.

Consultant
May 1987 to
November 1987

Reiders, Travis, Mussina, Humphreys and Harris
Williamsport, Pennsylvania

Retained as expert witness for the plaintiffs in the case of Johns, et al., v. Phillips ECG v. United Steel Workers of America, et al., U.S. District Court for the Middle District of Pennsylvania. In this case, White female employees charged that the company discriminated on the basis of sex, and violated the Equal Pay Act.

Consultant
May 1987 to
June 1987

Cincinnati Civil Service Commission
Cincinnati, Ohio

Retained to advise the Civil Service Commission as to the merit of an appeal by Jon Sears, an employee of the City of Cincinnati. Mr. Sears claimed that he was denied promotion to a managerial position because of his race. I assisted the Commission in conducting a public hearing regarding the matter and, after reviewing relevant documents and a transcript of the hearing, recommended that Mr. Sears' appeal for promotion be denied.

Consultant
February 1987 to
March 1988

Baltimore City Civil Service
Baltimore, Maryland

Retained as expert witness for the defendant in the case of Thomas DeShields v. Mayor and City Council of Baltimore, et al. (Civil Action No. 3-84-1905). Mr. DeShields charged that the promotion examination process for the position of Battalion Chief in the Fire Department was not valid, had an adverse impact against Blacks, and resulted in disparate treatment against him because of his race. The court ruled for the defendant.

Consultant
August 1986 to
January 1987

Bridgeport Civil Service Commission
Bridgeport, Connecticut

Retained to develop and administer a content-valid promotion procedure for the position of Police Lieutenant, including pre-test study materials, a written test, and work sample exercises.

Consultant
August 1986 to
September 1986

**Office of the Associate General Counsel, Personnel Appeals Board
U.S. General Accounting Office
Washington, D.C.**

Retained as expert witness for the complainant in the case of Chennareddy v. U.S. General Accounting Office. This case involved a charge of racial discrimination in promotions. I reviewed the promotional procedure at issue, prepared a written report, and testified at the Personnel Appeals Board Hearing.

Consultant
July 1986 to
October 1990

**Fitzpatrick and Associates
Washington, D.C.**

Retained as expert witness for the plaintiff in the cases of James Short, et al., v. Federal Bureau of Investigation (EEOC Complaint No. 033-079-X0377) and Bennett, et al., v. Federal Bureau of Investigation (EEOC Complaint No. 033-085-X5323). I was retained to review the promotion process for the position of Fingerprint Specialist in the Latent Fingerprint Section of the FBI and to offer an opinion as to its validity and fairness.

Consultant
June 1986 to
July 1986

**Legal Department, City of Bridgeport
Bridgeport, Connecticut**

Retained as expert witness for the defendant in the case of Association Against Discrimination Inc. v. City of Bridgeport. The case involved a charge by Black applicants for the position of Firefighter that rank ordering of candidates on an eligibility list was a racially discriminatory method of interpreting the scores on a Firefighter written test. I developed a system of interpreting the test scores based upon "band scoring" which was acceptable to the plaintiff, the City of Bridgeport, and the District Court. The Court ordered that the "banding" system be adopted.

Consultant
March 1986 to
January 1988

**Baltimore Civil Service
Baltimore, Maryland**

Retained to develop the 1986 and 1987 Police Sergeant promotion procedures based upon the system of "Targeted Testing" originally developed and implemented in 1984. This project involved the continued use of a pre-test study manual for the written test, and development and implementation of a written test and oral examination.

Consultant
February 1986 to
February 1991

**NAACP Legal Defense and Educational Fund
New York, New York**

Retained as expert witness for the defendants in the case of Bushey v. New York State Department of Correctional Services. My testimony was to be directed to the question of whether a promotion procedure, which had less adverse impact than another and was as valid, should be used in lieu of the procedure with greater adverse impact.

Consultant
January 1986 to
December 1989

**Bridgeport Civil Service Commission
Bridgeport, Connecticut**

Retained to develop content-valid promotion procedures for the positions of Fire Lieutenant and Telecommunications Operator. The project included conduct of a job analysis, development of a written test and oral board examination, and administration of both.

Consultant
January 1986 to
February 1988

**City of St. Petersburg
St. Petersburg, Florida**

Retained to develop a promotion procedure for the positions of Police Sergeant and Police Lieutenant. This project was a continuation of the "Targeted Testing" format initiated in 1984. The project included development of a pre-test study manual, written examination, and an assessment center.

Consultant
September 1985 to
December 1985

**The American Civil Liberties Union
Hartford, Connecticut**

Retained as expert for the plaintiff in the case of Cicero Booker v. City of Waterbury Connecticut. In this case, Black applicants alleged that the promotional procedures used by the Waterbury Police Department were discriminatory. I prepared a report stating my opinion as to the validity and fairness of the promotional procedures and submitted it to the Court.

Consultant
April 1985 to
September 1986

**San Francisco Lawyers Committee For Urban Affairs
San Francisco, California**

Retained as expert witness for the plaintiff in the case of United States v. City of San Francisco. This was a Title VII case in which Black and Female applicants for the position of Firefighter charged, among other things, that the entry-level Firefighter Examination used by the City of San Francisco (in 1984) was racially discriminatory. The parties agreed upon a settlement of the case that called for the development of a new entry-level examination.

Consultant
March 1985 to
December 1985

**Bridgeport Civil Service Commission
Bridgeport, Connecticut**

Retained to develop and validate a written examination for the position of Police Officer. The project included conduct of a job analysis, development, administration and scoring of a written test, and documentation of its validity. I agreed to serve as expert witness for the City of Bridgeport in the event of litigation involving this test.

Consultant
March 1985 to
July 1985

**Communications Workers of America
Washington, D.C.**

Retained to develop a training program aimed at improving the performance of CWA members on written tests and other selection and promotion procedures (e.g., work sample training modules) administered by the companies of the Bell System.

Consultant
January 1985

**Bramhall and Duncan
Attorneys at Law
Little Rock, Arkansas**

Testified as expert witness for the plaintiffs in the case of Gilbert v. City of Little Rock. This case was remanded to the District Court after a ruling for plaintiffs by the Eighth Circuit Court of Appeals. The City of Little Rock's appeal to the U.S. Supreme Court was denied.

Consultant
September 1984 to
July 1985

Baltimore City Civil Service Commission
Baltimore, Maryland

Retained to develop a content-valid promotion procedure for the positions of Police Sergeant and Lieutenant. Development of the Police Sergeant examination was ordered by the U.S. District Court for the District of Maryland in the case of Vanguard Justice Society v. Harry Hughes. I was selected by both plaintiffs and defendants (and approved by the Court) to develop the procedure.

Consultant
June 1984 to
July 1984

Bridgeport Civil Service Commission
Bridgeport, Commission

Retained to develop and validate a written examination for the position of Firefighter. The project included conduct of a job analysis, development, administration and scoring of a written test, as well as documentation of its validity. I agreed to serve as expert witness for the City of Bridgeport in the event of litigation involving the test.

Consultant
January 1984 to
July 1985

Bridgeport Civil Service Commission
Bridgeport, Connecticut

Retained to develop and validate a promotional procedure for the position of Police Detective. The project included conduct of a job analysis, as well as development of the procedure, its implementation, and documentation of its validity. I also agreed to serve as expert witness for the City of Bridgeport in the event of litigation involving this procedure.

Consultant
November 1983 to
January 1985

Mexican American Legal Defense and Educational Fund
Chicago, Illinois

Retained as expert for the plaintiff in the case of Rosario v. Cook County Department of Corrections. This case involved a charge of racial discrimination by Hispanic Corrections Officers seeking promotion to the position of Sergeant. The case was settled prior to trial.

Consultant
September 1983 to
December 1985

**City of St. Petersburg
St. Petersburg, Florida**

Retained to develop and/or guide the development of promotion procedures for several positions within the Police and Fire Departments, including Police Sergeant, Police Lieutenant, Fire Lieutenant, Fire Captain, and Deputy Chief. Each promotion procedure was based upon a system known as "Targeted Testing" developed by me. I also agreed to serve as expert witness for the City of St. Petersburg in the event of litigation involving these procedures.

Consultant
June 1983 to
December 1984

**New York State Department of Civil Service
Albany, New York**

Retained as consulting industrial psychologist to serve as plaintiff's representative in the development and implementation of new selection procedures for the positions of Correction Captain and Corrections Lieutenant in the New York State Department of Correctional Services. Development of the new procedures was ordered by the Court based upon a consent decree in the case of Kirkland v. New York State Department of Correctional Services.

Consultant
November 1982 to
January 1985

**Legal Action of Wisconsin Inc.
Milwaukee, Wisconsin**

Retained as expert witness for the plaintiff in the case of Martin v. State of Wisconsin.

Consultant
November 1982 to
June 1983

**Bridgeport Civil Service Commission
Bridgeport, Connecticut**

Retained to develop and administer a content-valid promotion procedure for the position of Police Sergeant. This project included conduct of a job analysis, development of a written test and structured oral interview, as well as implementation and scoring of the procedure. I agreed to serve as expert witness for the City of Bridgeport in the event of a legal challenge regarding the procedure. No such challenge arose.

Consultant
October 1982 to
October 1990

Perry, First, Reiher, Lerner and Quindel
Attorneys at Law
Milwaukee, Wisconsin

Retained as expert witness for the plaintiff in the case of League of Martin v. City of Milwaukee. This case involved a charge by Blacks within the Milwaukee Police Department that the Department's promotion procedures for positions above Police Officer, particularly those for Police Sergeant, were racially discriminatory. The case was settled prior to trial. As part of the settlement, defendants agreed to develop new promotion procedures. It was my responsibility to assist and advise counsel for plaintiffs with regard to monitoring the development of the new promotion procedures.

Consultant
September 1982 to
December 1987

Rosen and Dolan
Attorneys at Law
New Haven, Connecticut

Testified as expert witness for the plaintiffs in the case of Men and Women for Justice v. State of Connecticut. This was a Title VII case involving a charge of discrimination regarding the selection procedure for the position of State Trooper. The case was settled prior to a ruling by the Court. As part of the settlement agreement, I was designated by counsel for plaintiffs as consulting industrial psychologist responsible for assisting the Connecticut State Civil Service in the development of a new selection procedure for the position of State Trooper.

Consultant
August 1982 to
June 1995

Arent, Fox, Kintner, Plotkin and Kahn
Washington, D.C.

Retained as expert witness for the plaintiffs in the case of Cook v. Boorstin. This was a Title VII case that involved a charge by Blacks that certain promotion procedures used by the Library of Congress were racially discriminatory.

Consultant
April 1982

McCants, Kramer and Gerals
Washington, D.C.

Served as expert witness for the defendant in the case of McCullough v. United Services Organization. This was a Title VII case involving a charge by a Black employee that she was denied a promotion because of her race.

Consultant
January 1982 to
June 1995

City of Toledo
Toledo, Ohio

Retained as court-appointed expert in the case of Sarabia v. Duck. I was responsible for assisting the Toledo Civil Service Commission in the development and validation (in accordance with the Uniform Guidelines on Employee Selection Procedures) of a non-discriminatory selection procedure for the position of Police Officer. Responsibilities included assisting in the identification of subject areas to be tested, formulation of appropriate test questions, and standardization of each component of the selection process (e.g. background investigation, psychological evaluation and oral interview).

Consultant
December 1981 to
April 1982

Personnel Department
City of Hartford
Hartford, Connecticut

Developed a content-valid promotion procedure for the position of Police Sergeant. The project involved conduct of a job analysis, development, implementation, and scoring of the procedure, as well as documentation of its validity. I also agreed to testify as an expert witness for the City of Hartford in the event of a legal challenge regarding the procedure.

Consultant
December 1981 to
January 1982

Phillip Duncan and Manual Pruitt
Attorneys at Law
Little Rock, Arkansas

Testified as expert witness for the plaintiff in the case of Gilbert v. City of Little Rock. This was a Title VII case involving a charge by Blacks that the promotional procedures used by the Little Rock Police Department were racially discriminatory.

Consultant
October 1981 to
January 1982

District of Columbia Government
Washington, D.C.

Retained to provide an assessment of the validity and fairness of the entry-level written examination for Police Officer. My primary responsibility was to provide a recommendation regarding the most appropriate use of the examination in light of professional standards and the Uniform Guidelines on Employee Selection Procedures and to make a recommendation as to available alternatives.

Consultant
August 1981 to
December 1982

Sommers, Schwartz, Silver, and Schwartz
Southfield, Michigan

Retained as expert witness for the plaintiff in the case of Geoffrion v. Rubbermaid, Inc. This was a case in which a female employee charged that her employer violated the Equal Pay Act by paying her less than her male counterparts for the same work.

Consultant
June 1981 to
December 1989

The National Black Coalition of Federal Aviation Employees
Memphis, Tennessee

Retained to provide technical assistance with regard to the validity and fairness of the selection procedures used by the Federal Aviation Administration to select Air Traffic Controllers.

Consultant
May 1981 to
September 1985

Committee to Develop Joint Technical Standards for
Educational and Psychological Testing
American Psychological Association, American Educational
Research Association, and the National Council on
Measurement in Education
Washington, D.C.

Served as a technical advisor to the Committee. As such, I responded to specific questions, provided general counsel, and in some instances, reviewed Committee materials pertaining to the development of new joint technical standards for educational and psychological testing.

Consultant
April 1981 to
September 1981

Biggs and Bataglia
Wilmington, Delaware

Testified as expert witness for the plaintiff in the case of Wilmore, et al., v. City of Wilmington, et al. This was a Title VII case in which Blacks charged racial discrimination on the part of the Wilmington Fire Department through the use of racially discriminatory promotion procedures.

Consultant
January 1981 to
February 1981

National Association of Social Workers
Washington D.C.

Retained to provide technical advice with regard to the development of guidelines for the conduct of job analyses, when validating educational credentials.

Consultant
September 1980 to
January 1985

The Law Project
Atlanta, Georgia

Retained as expert witness for the plaintiff in the case of Jeanette Turner v. Georgia Department of Labor. Served as consultant to the plaintiff in the case of Kennedy, et al., v. Crittenden, et al. My responsibilities included assisting counsel in monitoring the development of new selection procedures at a large state hospital.

Consultant
September 1980 to
May 1981

Puerto Rican Legal Defense and Educational Fund
New York, New York

Retained as expert witness for the plaintiff in the case of Hispanic Society, et al., v. Civil Service Commission of the City of New York, and Guardians Association of the City of New York v. Civil Service Commission of the City of New York. In both Title VII cases, minorities charged that the New York City Police Department discriminated against them by using entry-level and promotion procedures that were not valid and had adverse impact. Both cases were settled prior to trial. As part of the settlement agreement, the City of New York agreed to retain consultants to develop new selection procedures for the positions of Police Officer and Police Sergeant. I was retained by counsel for plaintiff to monitor the development of new selection procedures. I cooperated with the City's consultants in developing the new entry-level Police Officer examination and provided assistance.

Consultant
August 1980 to
October 1980

Jephunneh Lawrence
Attorney at Law
Washington, D.C.

Testified as expert witness for the plaintiff in the case of Minnis, et al., v. The Home Loan Mortgage Corporation. This was a Title VII case in which the plaintiff charged that the defendant had discriminated on the basis of race by using promotion procedures that were not valid and had adverse impact.

Consultant
August 1980 to
September 1980

Chambers, Stein, Ferguson and Becton, P.A.
Charlotte, North Carolina

Retained to provide technical assistance to counsel for plaintiff regarding determination of the existence of adverse impact in the case of Bishop, et al., v. City of Greensboro Police Department.

Consultant
March 1980 to
May 1980

**Arent, Fox, Kintner, Plotkin and Kahn
Washington, D.C.**

Retained as expert witness for the plaintiff in the case of Miller v. Staats. This case involved a charge by Black employees of the Government Services Administration that the agency discriminated against them by making use of a promotion procedure (and, more specifically, a performance appraisal process) that was not valid and had adverse impact. The case was settled prior to trial. As part of the settlement, the Government Services Administration agreed to retain an outside consultant to develop new promotion procedures. I assisted counsel for plaintiffs in monitoring this work.

Consultant
January 1980 to
November 1980

**Detroit Police Department
Detroit, Michigan**

Retained to develop content-valid promotion examinations for the positions of Police Sergeant and Police Lieutenant. Both examinations were developed on the basis of a system called "Targeted Testing" created by me. Both examinations proved to be valid and fair and produced no adverse impact.

Consultant
June 1979 to
June 1981

**San Francisco Lawyers Committee For Urban Affairs
San Francisco, California**

Retained as expert witness for the plaintiff in the case of Luevano v. Campbell. This was a Title VII case in which plaintiff charged that the U.S. Civil Service Commission relied upon a racially discriminatory examination (PACE) in screening candidates for middle-management positions in the Federal Government. The case was settled prior to trial. The Civil Service Commission agreed to discontinue use of the test.

Consultant
May 1979 to
December 1989

**Communications Workers of America
Washington, D.C.**

Retained to provide technical assistance with regard to the evaluation (as to validity and fairness) of selection procedures developed by the American Telephone and Telegraph Company.

Consultant
May 1979 to
January 1981

**University Research Corporation
Washington, D.C.**

Retained to evaluate selection procedures used by police departments throughout the United States that received funds from the Law Enforcement Assistance Administration.

Consultant
February 1979 to
February 1986

**Institute for Public Representation
Georgetown University Law Center
Washington, D.C.**

Retained as technical expert for the plaintiffs in the case of Mckenzie v. Boyle. I developed a model promotional procedure for the position of Offset Printing Press Operator.

Consultant
December 1978 to
December 1980

**Yablonski, Both and Edelman
Washington, D.C.**

Retained as expert witness for the plaintiff in the case of Hubbard v. Rubbermaid Inc. This case involved a charge by female employees that the company violated the Equal Pay Act by paying them less than their male counterparts for performing the same work. The case was settled prior to trial.

Consultant
October 1978 to
October 1981

**Arnold and Porter
Washington, D.C.**

Testified as expert witness for the plaintiff in the case of NAACP v. Prince George's County, Maryland. This case involved a charge by Blacks that Prince George's County discriminated against them by utilizing promotional procedures that were not valid and had adverse impact.

Consultant
August 1978 to
April 1979

**Wilmer Cutler and Pickering
Washington, D.C.**

Testified as expert witness for the plaintiff in the case of Segar v. Civiletti. This was a Title VII case in which plaintiffs charged that the Drug Enforcement Administration discriminated against them by utilizing a promotion procedure, specifically a performance appraisal process, that was not valid and had adverse impact.

Consultant
July 1978 to
December 1982

**City of Cincinnati
Cincinnati, Ohio**

Retained to train personnel department staff in the areas of job analysis, test development, and test validation. I developed and validated employment tests for the positions of Assistant Supervisor Municipal Garage and Community Center Director II.

Consultant
July 1978 to
July 1980

**McDonald and McDonald
Attorneys at Law
Houston, Texas**

Testified as an expert witness for the plaintiff in the case of Cormier v. Pittsburgh Plate Glass Company. This was a Title VII case in which plaintiff charged that the company discriminated against Black applicants by utilizing employment tests that were not valid and had adverse impact.

Consultant
July 1978 to
July 1979

**Lawyers' Committee for Civil Rights Under Law
Washington, D.C.**

Retained as expert witness for the plaintiff in the case of Tarver, et al., v. City of Houston, et al. This was a Title VII case in which plaintiff charged that the Police and Fire Departments of the City of Houston discriminated against Blacks by utilizing entry-level and promotion procedures that were not valid and had adverse impact. The case was settled prior to trial. As part of the settlement, the City of Houston agreed to develop new selection procedures for both the Police and Fire Departments.

Testified as an expert witness for plaintiff in the case of Pegues v. Mississippi State Employment Service. This was a Title VII case in which plaintiff charged that the Mississippi State Employment Service discriminated against Blacks by utilizing employment tests that were not valid and had adverse impact.

Consultant
April 1978 to
June 1978

**Prince George's County Government
Prince George's County, Maryland**

Retained to develop entry-level written examinations for the positions of Firefighter and Correctional Officer.

Consultant
April 1978 to
May 1978

George M. Strickler
Attorney at Law
New Orleans, Louisiana

Retained as expert witness for the plaintiff in the case of Johnson, et al., v. City of Shreveport, et al. This was a Title VII case in which plaintiff charged that the Fire Department of the City of Shreveport discriminated against Blacks by utilizing selection procedures that were not valid and had adverse impact.

Consultant
June 1977 to
August 1977

Legal Aid Society
Alameda County, California

Retained as expert witness for the plaintiff in the case of Ellis v. Naval Air Rework Facility. This was a Title VII case in which plaintiff charged that the Naval Air Rework Facility discriminated against Blacks by utilizing selection procedures that were not valid and had adverse impact. The case was settled prior to trial.

Consultant
May 1977 to
March 1984

NAACP Legal Defense and Educational Fund
Washington D.C.

Retained as expert witness for the plaintiff in the cases of Williams v. City of New Orleans and Howard v. McLucas. These were Title VII cases in which plaintiff charged that the employer discriminated against Blacks by utilizing selection procedures that were not valid and had adverse impact. Both cases were settled prior to trial.

Testified as expert witness for the plaintiff in the cases of Chisholm v. U.S. Postal Service, Harrison v. Lewis, Lewis v. National Labor Relations Board, and Griffin v. U.S. Postal Service. These were Title VII cases in which plaintiffs charged that the employer discriminated against Blacks by utilizing selection procedures that were not valid and had adverse impact.

Professional Conference Papers and Presentations

April 2007

**Twenty-Second Annual Conference of
the Society for Industrial and Organizational
Psychology Panel Discussion**

Participated in a panel discussions entitled: “Adverse Impact: The Experts Discuss What Employers Need to Know”

May 2006

**Twenty-First Annual Conference of
The Society for Industrial and
Organizational Psychology**

Conducted a half-day workshop entitled “Recent Practical, Methodological and Statistical Advances in the Detection of Adverse Impact and Test Bias

Made a presentation entitled “Adverse Impact: What Is It and What Can be Done About It”

April 2005

**Twentieth Annual Conference of
The Society for Industrial and
Organizational Psychology**

Made a presentation entitled “Race Discrimination Cases: Past, Present and Future.”

April 2003

**Personnel Testing Council of
Metropolitan Washington DC**

Presented an address entitled “Cognitive Ability & Workforce Diversity: Can They Co-Exist?”

March 2002

**Mid-Winter Conference
American Bar Association
Section of Labor and Employment Law
Employment Rights and Responsibilities Committee
Puerto Vallarta, Mexico**

Presented an address entitled “Selection Procedures in Reductions-in-Force.”

January 2002

**Winter Conference
Mid-Atlantic Personnel Assessment Consortium
Baltimore, Maryland**

Presented an address entitled “The Development and Validation of a Firefighter Test Battery.”

May 2001

**Spring Conference
Personnel Testing Council of Southern California
Covina, California**

Delivered keynote address entitled “Issues in Personnel Selection: The Past Quarter Century to 2010.”

April 2000

**Fifteenth Annual Conference
Society for Industrial and Organizational Psychology
New Orleans, Louisiana**

Presented an address entitled “A Base Rate Study of Firefighter Selection.”

March 2000

**Institute of People Management of South Africa
Assessment Center Study Group
Capetown, South Africa**

Presented an address entitled “Utilizing the Assessment Center to Measure Competencies Derived from the Organization’s Mission and Vision.”

Presented an address entitled “Utilizing Creative Assessment Centers to Achieve Greater Equity in the Work Force.”

April 1998

**Thirteenth Annual Conference
Society for Industrial and Organizational Psychology
Dallas, Texas**

Presented a half-day pre-conference workshop entitled “Video-Based Situational Training: Pros and Cons.”

Presented a symposium addressing the pros and cons of banding.

**July 1994 to
January 1995**

**Lang and Padgett
Washington, D.C.**

Conducted three one-day workshops on the use of statistics in Title VII cases.

- October 1994** **Industrial and Organizational Psychology Program
Institute for Psychological Research and Application
Department of Psychology
Bowling Green State University
Conference on Evaluating Alternatives to Traditional Testing**
- Presented a lecture entitled “Testing Medium, Validity, and Test Performance.”
- May 1993** **Eighth Annual Conference
Society for Industrial and Organizational Psychology
San Francisco, California**
- Presented a paper entitled “Reducing Adverse Impact Without Reducing Validity.”
- May 1992** **Seventh Annual Conference
Society for Industrial and Organizational Psychology
Montreal, Canada**
- Presented a paper entitled “The Social and Political Nature of Selection.”
- Presented a paper entitled “The Sliding Band Referral Method: A Perspective from the U.S. Public Sector.”
- April 1991** **Sixth Annual Conference
Society for Industrial and Organizational Psychology
St. Louis, Missouri**
- Participated as a discussant in a symposium entitled “Integrity Testing: Reports from the Office of Technology Assessment and the American Psychological Association.”
- April 1990** **Fifth Annual Conference
Society for Industrial and Organizational Psychology
Miami, Florida**
- Presented a paper entitled “Affirmative Action in the 1990s.”
- Presented a Master Tutorial with Dr. Wayne Cascio on “Innovations in Testing.”

June 1989

**International Personnel Management Association
Assessment Council
Conference On Personnel Assessment
Orlando Florida**

Presented a one-day workshop entitled “Innovations in Employment Testing That Improve Validity and Reduce Adverse Impact.”

Participated in a panel discussion entitled “The *Guidelines* in the Year 2000.”

Participated in a panel discussion entitled “Testing in the Public Sector under a Consent Decree.”

Participated in a panel discussion entitled “Banding and Other Uses of Eligible Lists: Psychometric, Legal, and Social Considerations.”

April 1985

**Dayton Intergovernment Equal Employment
Opportunity Council
Dayton, Ohio**

Participated in the eleventh annual EEO Seminar sponsored by the Federal Executive Association of the Dayton Intergovernment Equal Employment Opportunity Council. I conducted a workshop on the use of employment tests.

April 1985

**Hispanic National Bar Association National Convention
New York, New York**

Gave an address on the topic of “Affirmative Action.”

January 1985

**Washington Statistical Society
Washington D.C.**

Presented comments, as a discussant, on the topic “Psychometrics in Personnel Selection.”

December 1984 **Association of American Railroads
Thirty-Third Annual Conference of the Committee on Equal
Employment Opportunity
Washington, D.C.**

Presented a paper entitled "Employment Testing and Minorities:
Recent Trends and Lingering Issues."

September 1984 **Federal Bar Association/Bureau of National Affairs
EEO Briefing Conference
Washington, D.C.**

Presented a paper entitled "The Benefits of Testing to Minorities."

October 1983 **International Personnel Management Association
Washington, D.C.**

Presented a paper entitled "Alternative Uses of Traditional
Selection Procedures."

August 1983 **American Psychological Association
Washington, D.C.**

Presented comments, as a discussant, in a symposium entitled
"Performance Appraisal in the Legal Environment."

May 1983 **International Personnel Management Association
Assessment Council
Washington, D.C.**

Presented a paper entitled "Alternative Uses of Traditional
Selection Procedures."

December 1982 **International Association of Official Human Rights Agencies
Washington, D.C.**

Presented an address on the use of statistical evidence in housing
discrimination cases.

- October 1982** **Bureau of National Affairs
Fifth Annual Conference
Washington, D.C.**
- Presented an address on issues involved in the assessment of discrimination against the handicapped.
- January 1982** **Commission for Racial Equality
Conference on Law Enforcement Strategies and Tactics
Oxford University, Oxford, England**
- Presented a paper entitled “The Role of the Industrial Psychologist in an Employment Discrimination Case.”
- June 1979** **International Personnel Management Association
Washington, D.C.**
- Presented a paper entitled “Validation: Art Science of Folly.”
- June 1979** **Association of Black Psychologists
Washington, D.C.**
- Conducted a workshop on methods of teaching test-taking.
- February 1978** **Howard University College of Nursing
Washington, D.C.**
- Designed and conducted a lecture series on educational evaluation.
- January 1978** **Institute of Public Service
Hartford, Connecticut**
- Designed and conducted a day-long workshop on the proper development of oral examinations.
- August 1977** **Prince George's County Office of Personnel
Upper Marlboro, Maryland**
- Designed and conducted a two-day workshop on the proper method of conducting performance appraisals.

August 1975

**American Psychological Association
Annual Convention
Chicago, Illinois**

Presented a paper entitled "Process Criteria: The Content of the Black Box."

Previous Employment

Personnel Analyst
July 1976 to
July 1977

Prince George's County Office of Personnel
Upper Marlboro, Maryland

Evaluated the overall employment selection system of the County to determine where it might be improved in order to comply with the Uniform Guidelines on Employee Selection Procedures.

**Consultant
Psychologist**
(Part Time)
May 1975 to
July 1979

Maryland State Department of Personnel
Baltimore, Maryland

Directed and gave assistance in the conduct of criterion-related and content validation studies. Responsibilities included conduct of job analyses, development of selection instruments and criterion measures, as well as statistical analysis of research results. I also directed the development of a comprehensive job analysis procedure designed to produce accurate descriptions of job components in accordance with the requirements of the Uniform Guidelines on Employee Selection Procedures.

**Personnel
Psychologist**
May 1975 to
September 1975

Internal Revenue Service
Washington, D.C.

Conducted concurrent validation studies of the procedures used for selection to noncompetitive positions within the IRS. Developed research plans and experimental designs for research projects in such areas as personnel selection, job analysis, performance evaluation, and test development.

Graduate Assistant
September 1972 to
May 1975

University of Maryland
College Park, Maryland

Taught a three-hour course in industrial psychology. The course was designed for junior- and senior-level students. I assisted in the conduct of research related to selection and training.

Instructor/Counselor
September 1971 to
May 1972

Northeast Louisiana University
Monroe, Louisiana

Taught introductory psychology courses and served as student counselor.

Personnel Assistant **Olinkraft, Inc.**
June 1969 to
August 1971
West Monroe, Louisiana

Tested all applicants for hourly employment, including screening of applications, scoring of tests, and establishment of norms. My responsibilities included validation of company tests. I recruited persons from minority groups to fill managerial positions within the company.

College Teaching

College Instructor **Howard University College of Nursing**
(Part Time)
August 1977 to
May 1987
Washington, D.C.

Taught courses in basic and advanced problem solving. Course content included theoretical and practical analyses of problems and problem solving, with emphasis on development of critical thinking skills, analytical reasoning, and test-wiseness.

Military Service

First Lieutenant **United States Army**
May 1972 to
September 1972
Fort Benning, Georgia

Attended officer's basic training, Military Intelligence Branch, United States Army. Placed in reserve status for seven years until honorably discharged with the rank of Captain.

Community Service

May 1994 to **Good Counsel High School Parents' Association**
June 1995 **Wheaton, Maryland**

Chairman, Equity Committee

May 1994 to **Potomac Valley Amateur Athletic Union**
July 1994 **Washington, D.C.**

Assistant Basketball Coach - Girls 11 and Under

**January 1994 to
March 1996**

**Concordia Lutheran School
Hyattsville, Maryland**

Girls Basketball Coach

**November 1982
to 1990**

**St. Mary's Athletic Association
Landover Hills, Maryland**

Catholic Youth Organization Boys Basketball Coach

**April 1992 to
May 1992**

**Potomac Valley Amateur Athletic Union
Washington, D.C.**

Basketball Coach - Boys 16 and Under

**September 1967 to
March 1968**

**Varsity Basketball Coach, Little Flower Academy, Monroe,
Louisiana**

Appendix 3

Tables Showing Demographics of Relevant Positions

Table 1A Number of Employees, by Gender, by Job Group, by Year^{a)}

Full-Time Employees

Sales Associate

Year	Male	Percent	Female	Percent	Total
2004	919	25.5%	2,682	74.5%	3,601
2005	1,028	25.8%	2,958	74.2%	3,986
2006	1,251	27.0%	3,388	73.0%	4,639
2007	1,324	27.2%	3,547	72.8%	4,871
2008	1,223	27.7%	3,197	72.3%	4,420
2009	1,122	26.8%	3,069	73.2%	4,191
2010	1,166	26.9%	3,161	73.1%	4,327
2011	1,234	27.3%	3,289	72.7%	4,523
2012	1,278	27.2%	3,424	72.8%	4,702
Average	1,172	26.9%	3,191	73.1%	4,362

Table 1B Department Manager

Year	Male	Percent	Female	Percent	Total
2004	63	43.8%	81	56.3%	144
2005	73	41.7%	102	58.3%	175
2006	80	39.6%	122	60.4%	202
2007	114	44.0%	145	56.0%	259
2008	139	45.9%	164	54.1%	303
2009	135	42.3%	184	57.7%	319
2010	147	45.8%	174	54.2%	321
2011	132	41.4%	187	58.6%	319
2012	130	42.1%	179	57.9%	309
Average	113	43.1%	149	56.9%	261

Table 1C Assistant Manager

Year	Male	Percent	Female	Percent	Total
2004	307	28.9%	754	71.1%	1,061
2005	317	28.4%	801	71.6%	1,118
2006	329	27.1%	883	72.9%	1,212
2007	374	29.0%	914	71.0%	1,288
2008	407	28.3%	1,033	71.7%	1,440
2009	406	27.8%	1,053	72.2%	1,459
2010	372	26.2%	1,046	73.8%	1,418
2011	371	27.3%	988	72.7%	1,359
2012	352	27.6%	922	72.4%	1,274
Average	359	27.8%	933	72.2%	1,292

Table 1D Store Manager

Year	Male	Percent	Female	Percent	Total
2004	430	39.9%	648	60.1%	1,078
2005	458	39.2%	711	60.8%	1,169
2006	503	39.8%	761	60.2%	1,264
2007	542	40.0%	812	60.0%	1,354
2008	552	39.8%	834	60.2%	1,386
2009	541	40.1%	807	59.9%	1,348
2010	501	38.8%	790	61.2%	1,291
2011	509	39.6%	775	60.4%	1,284
2012	490	38.1%	797	61.9%	1,287
Average	503	39.5%	771	60.5%	1,273

Table 1E Store Manager in Waiting

Year	Male	Percent	Female	Percent	Total
2004	26	46.4%	30	53.6%	56
2005	25	50.0%	25	50.0%	50
2006	32	57.1%	24	42.9%	56
2007	32	59.3%	22	40.7%	54
2008	29	59.2%	20	40.8%	49
2009	17	68.0%	8	32.0%	25
2010	16	61.5%	10	38.5%	26
2011	16	51.6%	15	48.4%	31
2012	14	51.9%	13	48.1%	27
Average	23	55.3%	19	44.7%	42

^[a] Inclusion in the table for a particular position requires being an active employee, full-time, and occupying that position as of Dec. 31 of the year.

Table 1F District Manager*

Month	Males	Females	Unknown	Total	Max % Female
Jan '02	45	27	5	77	41.56%
Jan '03	44	30	7	81	45.68%
Jan '04	47	30	7	84	44.05%
Jan '05	50	32	7	89	43.82%
Jan '06	55	30	8	93	40.86%
Jan '07	59	36	7	102	42.16%
Jan '08	63	41	5	109	42.20%
Jan '09	63	43	4	110	42.73%
Jan '10	62	43	4	109	43.12%
Jan '11	62	43	5	110	43.64%
Jan '12	60	46	4	110	45.45%

*The summary chart below shows estimated DM information. There are approximately 236 individuals identified as DM. We have been able to confirm the gender of 193 of those individuals. We determined the gender of 27 individuals using their first name and we have not been able to classify the remaining 16. This last column on this chart shows the maximum percent of females that could have held the district manager position by assuming all of the unknown individuals were females.

Table 1G Vice President

Month	Males	Females	Total	% of Females
Jan '02	6	0	6	0.0
Jan '03	6	0	6	0.0
Jan '04	7	2	9	22.2%
June '04	7	4	11	36.4%
Jan '05	7	4	11	36.4%
Jan '06	7	4	11	36.4%
Jan '07	7	5	12	41.6%
Jan '08	9	5	14	41.6%
Jan '09	9	5	14	41.6%
Jan '10	9	5	14	41.6%
Jan '11	9	5	14	41.6%
Jan '12	9	5	14	41.6%

This information is from January 2002 through July 2012. The title VPRO was not used until February 2004. For the time period from January 2002 – January 2004 the Information represents VPs. I added a 6 month shot in 2004 since January represented the VP time period, but the remainder of 2004 was the period used the title VPRO.

Appendix 4

Documents Relied Upon

1. "Types of Effective Feedback," SJI 35058.
2. District Manager Development Program, Phase 2, Module: Facilitation Skills, Participant's Guide, SJI 35596-606
3. Managing Interpersonal Relationships Participant Guide, SJI 34596-789
4. Creating the Ultimate Work Environment. VP/Trainer Script. SJI 34364-85
5. Sterling Jewelers Lesson Plan – Store, SJI 34118-35.
6. Management Training System Recruitment & Selection Phase 1, SJI 10764-96.
7. Sterling Jewelers Talent Acquisition Mall Career Development School, SJI 28045-72
8. Jared Performance Appraisal, Sales, SJI 468383-85.
9. Jared Performance Appraisal, Inventory Control Clerk, SJI 468386-88
10. Jared Performance Appraisal, Department Manager, SJI 468379-81
11. Jared Performance Appraisal, Assistant General Manager, SJI 468374-77.
12. Jared Performance Appraisal, General Manager, SJI 468369-72.
13. Store Performance Appraisal, Sales Support, SJI 468365-67.
14. Store Performance Appraisal, Sales, SJI 468360-63.
15. Store Performance Appraisal, Assistant Manager, SJI 468355-58.
16. Store Performance Appraisal, Store Manager, SJI 10628-31.
17. "Maximizing Your Success. Winning Through Effective Liability Prevention." SJI 274155 274247
18. Complaint, EEOC v. Sterling Jewelers Inc., No. 08-cv-0706 (W.D.N.Y. Sept. 23, 2008)
19. Claimants' First Amended Class Action Complaint, Jock v. Sterling Jewelers Inc., AAA No. 11 160 00655 (AAA June 26, 2008, Roberts, Kathleen, Arb.)
20. Sterling Jewelers Inc., Talent Acquisition Mall CDS Facilitator's Guide, SJI 10682-712.
21. Sterling Jewelers. Store Satisfaction Survey. 2006, SJI 55987-6075.
22. Employee Relations Procedures Manual, SJI 470098-188.
23. The Store Operations-HR Partnership. The HR Department. SJI 274155-247 at 274166.
24. Email, Re: HR Basics, with attachment, From: Susan Hale, SJI 187712-37.
25. Current Original Personnel Policy Manual as of 5/05, SJI 2120-2527.
26. Plaintiffs' First Amended Class Action Complaint, Jock v. Sterling Jewelers Inc., No. 2:08-cv-02875-JSR (S.D.N.Y. Apr. 23, 2008)
27. Phase 2 District Manager Development Program Succession Management Leader's Guide, SJI 35478-530 at 35493-95

Depositions

28. Deposition of [REDACTED] and [REDACTED].
29. Deposition of Frank William Luth, III. 11/12/2012.
30. Deposition of [REDACTED]. [REDACTED].
31. Deposition of Steven John Becker. 12/4/2012.
32. Deposition of [REDACTED]. [REDACTED].
33. Deposition of [REDACTED]. [REDACTED].
34. Deposition of [REDACTED]. [REDACTED].
35. Deposition of Tom Parks. 3/8/2013.
36. Deposition of David Everton. 2/8/2013.
37. Deposition of Patrice L. Harris. 1/24/2013.
38. Deposition of Joe Spagnola. 2/12/2013.
39. Deposition of [REDACTED]. [REDACTED].

40. Deposition of Maryellen Menett 3/21/2013.
41. Deposition of Robert Anthony (BO) Berger 2/13/2013.

Declarant Interview Forms

1. Declarant Interview Form of Natalyn Belanger.
2. Declarant Interview Form of Jodi-Lynn Hartman.
3. Declarant Interview Form of Theresa Lauria.
4. Declarant Interview Form of Diane Acampora.
5. Declarant Interview Form of Cathy Malone.
6. Declarant Interview Form of Darlene Cerlanek.
7. Declarant Interview Form of Heather Ballou.
8. Declarant Interview Form of Sarah Converse.
9. Declarant Interview Form of Tina McDonald.
10. Declarant Interview Form of Richard Sumen.
11. Declarant Interview Form (Blank)

Declarations of complainants

1. D. Walters, Decl., Ex. 7 at A249.
2. T. Waring, Decl., Ex. 7 at A251.
3. K. Bush, Decl., Ex. 7 at A30.
4. C. Mantia, Decl., Ex. 7 at A160.
5. S. Chegini, Decl., Ex. 7 at A41.
6. H. Contrenchis, Decl., Ex. 7 at A56.
7. M. Corey, Decl. [Supp.], Ex. 7 at A62, A63.
8. A. Gray, Decl., Ex. 7 at A113.
9. C. Harkness, Decl., Ex. 7 at A119.
10. M. Arlene Josephsen, Decl., Ex. 7 at A137.
11. L. King, Decl., Ex. 7 at A143.
12. J. Fundora, Decl. [Supp.], Ex. 7 at A102.
13. L. Boyington, Decl., Ex. 7 at A28.
14. T. (Borders) Ward, Decl., Ex. 7 at A250.
15. A. Ekman, Decl., Ex. 7 at A87.A. Melton, Decl. [Supp.], Ex. 7 at A169.
16. B. Cotton, Decl., Ex. 7 at A64.
17. C. McDonald, Decl., Ex. 7 at A164.
18. C. Ferreri, Decl., Ex. 7 at A94.
19. P. Fearn, Decl., Ex. 7 at A93.
20. K. Ellingburg, Decl., Ex. 7 at A88.
21. M. Nolan, Decl., Ex. 7 at A179.
22. J. Lamb, Decl., Ex. 7 at A146.
23. A. Christy, Decl., Ex. 7 at A44.
24. J. Clemens, Decl., Ex. 7 at A50.
25. T. Lauria, Decl. [Supp.], Ex. 7 at A148.
26. K. Looney, Decl. [Supp.], Ex. 7 at A156.
27. M. Seiger, Decl., Ex. 7 at A218.
28. R. Wilson, Decl., Ex. 7 at A256.

29. A. O'Quinn, Decl., Ex. 7 at A183.
30. G. Eagle, Decl., Ex. 7 at A86.
31. A. Parker, Decl., Ex. 7 at A192.
32. B. Bartl, Decl., Ex. 7 at A16.
33. V. DeMarco, Decl. [Supp.], Ex. 7 at A75.
34. J. Kabbas, Decl., Ex. 7 at A138.
35. P. Case, Decl., Ex. 7 at A37.
36. H. Henry, Decl., Ex. 7 at A124.
37. C. Harris, , Decl., Ex. 7 at A120.
38. L. Jackson, , Decl., Ex. 7 at A132.
39. S. Cisneros-McMillan, , Decl., Ex. 7 at A47.
40. I. Palmer, , Decl., Ex. 7 at A190.
41. T. McCullough Butler, Decl., Ex. 7 at A31.
42. R. Heinly, Decl., Ex. 7 at A123.
43. R. Poe, Decl., Ex. 7 at A198.
44. A. Brown Coleman, Decl., Ex. 7 at A52.
45. B. Cambra, Decl., Ex. 7 at A35.
46. A. Dawn Gough, Decl., Ex. 7 at A112.
47. E. S. Purdy, Decl., Ex. 7 at A200.
48. C. Scherbring, Decl., Ex. 7 at A217
49. S. E. Crump, Decl. [Supp.], Ex. 7 at A69.
50. S. Bell, Decl. [Supp.], Ex. 7 at A22.
51. N. Arena, Decl., Ex. 7 at A7.
52. D. Bartl, Decl., Ex. 7 at A17.
53. L. Blarek, Decl., Ex. 7 at A24.
54. B. Claybon, Decl., Ex. 7 at A49.
55. C. Colston, Decl., Ex. 7 at A53.
56. K. Corey, Decl., Ex. 7 at A60. .
57. M. Corey, Decl., Ex. 7 at A61.
58. D. Cunningham, Decl., Ex. 7 at A70.
59. D. Davison, Decl., Ex. 7 at A72.
60. J. Dimenna, Decl., Ex. 7 at A78.
61. D. Dixon, Decl., Ex. 7 at A79.
62. J. Dornan, Decl., Ex. 7 at A81.
63. S. Douglas, Decl., Ex. 7 at A84.
64. C. Ellis, Decl., Ex. 7 at A89.
65. M. Emerson, Decl., Ex. 7 at A90.
66. J. Farrell, Decl., Ex. 7 at A92.
67. B. Feterick, Decl., Ex. 7 at A95.
68. A. Foster, Decl., Ex. 7 at A98.
69. G. Gardner, Decl., Ex. 7 at A103.
70. M. Gianni, Decl., Ex. 7 at A104.
71. W. Hamilton, Decl., Ex. 7 at A117.
72. D. Huffman, Decl., Ex. 7 at A130.
73. K. Jennings, Decl., Ex. 7 at A133.
74. A. Kalembe, Decl., Ex. 7 at A139.

75. J. Kessler, Decl., Ex. 7 at A141.
76. S. Lawyer, Decl., Ex. 7 at A150.
77. K. Lipp, Decl., Ex. 7 at A152.
78. K. Looney, Decl., Ex. 7 at A155.
79. C. Malone, Decl., Ex. 7 at A158.
80. D. Meadows, Decl., Ex. 7 at A166.
81. A. Melton, Decl., Ex. 7 at A168.
82. A. Mong, Decl., Ex. 7 at A173.
83. A. Roberts, Decl., Ex. 7 at A207.
84. W. Avila, Decl., Ex. 7 at A8.
85. J. Bailey, Decl., Ex. 7 at A9.
86. M. Lee Baugh, Decl., Ex. 7 at A19.
87. S. Bell, Decl., Ex. 7 at A21.
88. B. Craven, Decl., Ex. 7 at A66.
89. R. Boyd, Decl., Ex. 7 at A27.
90. E. Caldwell, Decl., Ex. 7 at A33.
91. G. Canonico, Decl., Ex. 7 at A36.
92. C. Malone, Decl., Ex. 7 at A. 154
93. C. Malone, Supp. Decl, Ex. 7 at A 155
94. A. Clough, Decl., Ex. 7 at A51.
95. K. Christy, Decl., Ex. 7 at A45.
96. K. Contreras, Decl., Ex. 7 at A57.
97. D. Congin, Decl., Ex. 7 at A54.
98. L. Gullidge, Decl., Ex. 7 at A114.
99. B. McCaffery, Decl., Ex. 7 at A162.
100. T. McDonald, Decl., Ex. 7 at A165
101. A. Mong, Decl. [Amended], Ex. 7 at A.
102. D. Noonan, Decl., Ex. 7 at A180.
103. V. Osborn, Decl., Ex. 7 at A187.
104. R. Parsley, Decl., Ex. 7 at A193.
105. P. Frazier-Matthews, Decl., Ex. 7 at A99.
106. E. Pinson, Decl., Ex. 7 at A197.
107. D. Rayl, Decl., Ex. 7 at A201.
108. M. Ricker, Decl., Ex. 7 at A204.
109. S. Roberson, Decl., Ex. 7 at A205.
110. A. Roberts, Decl., Ex. 7 at A208.
111. W. Russo, Decl., Ex. 7 at A212.
112. L. Ryan, Decl., Ex. 7 at A213.
113. S. Sargent, Decl., Ex. 7 at A214..
114. J. Sarhan, Decl., Ex. 7 at A215.
115. D. Shulman, Decl., Ex. 7 at A223.
116. M. Small, Decl., Ex. 7 at A225.
117. A. Smith, Decl., Ex. 7 at A226.
118. S. Smith, Decl., Ex. 7 at A230.
119. D. Szlag, Decl., Ex. 7 at A237.
120. R. Taha, Decl., Ex. 7 at A238.

121. A. Tarrab, Decl., Ex. 7 at A239.
122. A. Temples, Decl., Ex. 7 at A242
123. D. Thielker, Decl., Ex. 7 at A243.
124. H. Thompson, Decl., Ex. 7 at A245
125. B. Tumlin, Decl., Ex. 7 at A246
126. B. White, Decl., Ex. 7 at A252.
127. J. Whyde, Decl., Ex. 7 at A254.
128. S. Wilson, Decl., Ex. 7 at A257.
129. K. Wytas, Decl., Ex. 7 at A259
130. T. Zenner, Decl., Ex. 7 at A261.
131. C. Blum, Decl., Ex. 7 at A25.
132. D. Byrd, Decl., Ex. 7 at A32
133. R. Chatman, Decl., Ex. 7 at A40.
134. T. Flippin, Decl., Ex. 7 at A97.
135. G. Kohr, Decl.[Supp.], Ex. 7 at A144.
136. S. Miller, Decl. [Supp.], Ex. 7 at A171.
137. P. Storm, Decl., Ex. 7 at A235.
138. D. Thielker, Decl. [Supp.], Ex. 7 at A244.
139. L. Zalanka, Decl., Ex. 7 at A260.
140. D. Call, Decl., Ex. 7 at A34.
141. J. Delorey, Decl., Ex. 7 at A73.
142. P. Nieto, Decl., Ex. 7 at A177.
143. K. Oliver, Decl., Ex. 7 at A181.
144. J. Perrin, Decl., Ex. 7 at A195.
145. J. Philips, Decl., Ex. 7 at A196
146. J. Powell, Decl., Ex. 7 at A199.
147. T. Stephens, Decl., Ex. 7 at A234.
148. V. White, Decl., Ex. 7 at A253.
149. V. Goodno, Decl., Ex. 7 at A110.
150. T. Adair, Decl., Ex. 7 at A3.
151. J. Hartman, Decl., Ex. 7 at A121.
152. S. Hurley, Decl., Ex. 7 at A131.
153. J. Glaude, Decl., Ex. 7 at A105.
154. T. Lauria, Decl., Ex. 7 at A147.
155. D. Acampora, Decl., Ex. 7 at A1.
156. H. Ballou, Decl., Ex. 7 at A12.
157. T. Barnes, Decl., Ex. 7 at A15.
158. N. Belanger, Decl., Ex. 7 at A20.
159. D. Cerlanek, Decl., Ex. 7 at A39.
160. K. Chiavaroli, Decl., Ex. 7 at A42.
161. S. Converse, Decl., Ex. 7 at A58.
162. M. Crabs, Decl., Ex. 7 at A65.
163. D. Acampora, Decl. [Supp.], Ex. 7 at A2.
164. M. Lee (Baugh) Alva, Decl. [Supp.], Ex. 7 at A4.
165. E. Alvarez, Decl., Ex. 7 at A5.
166. A. Anderson, Decl., Ex. 7 at A6.

167. S. Ballard, Decl., Ex. 7 at A10.
168. S. Ballard, Decl. [Supp.], Ex. 7 at A11.
169. H. Ballou, Decl. [Supp.], Ex. 7 at A13.
170. A. Barger, Decl., Ex. 7 at A14.
171. A. Battaglia-Lagalante, Decl., Ex. 7 at A18.
172. B. Bonner, Decl., Ex. 7 at A26.
173. L. Brown, Decl., Ex. 7 at A29.
174. M. Casillo, Decl., Ex. 7 at A38.
175. K. Chiavaroli, Decl. [Supp.], Ex. 7 at A43.
176. K. Christy, Decl. [Supp.], Ex. 7 at A46.
177. D. Cisar, Decl., Ex. 7 at A48.
178. E. Contaldi, Decl., Ex. 7 at A55.
179. S. Converse, Decl. [Supp.], Ex. 7 at A59.
180. A. Crenshaw, Decl., Ex. 7 at A67.
181. S. Crump, Decl., Ex. 7 at A68.
182. M. Davis, Decl., Ex. 7 at A71.
183. V. DeMarco, Decl., Ex. 7 at A74.
184. J. Digennaro, Decl., Ex. 7 at A76.
185. D. Digrazia, Decl., Ex. 7 at A77.
186. M. Donsky-Foster, Decl., Ex. 7 at A80.
187. D. Dotson, Decl., Ex. 7 at A82.
188. D. Dotson, Decl. [Supp.], Ex. 7 at A83.
189. S. Douglas, Decl. [Supp.], Ex. 7 at A84.
190. P. Erhardt, Decl., Ex. 7 at A91.
191. E. Flaska, Decl., Ex. 7 at A96.
192. E. Joyce Freeman, Decl., Ex. 7 at A100.
193. J. Fundora, Decl., Ex. 7 at A101.
194. J. Glaude, Decl. [Supp.], Ex. 7 at A106.
195. D. Gold, Decl., Ex. 7 at A107.
196. S. Goldberg, Decl., Ex. 7 at A108.
197. S. Goldberg, Decl. [Supp.], Ex. 7 at A109.
198. C. Gorham, Decl., Ex. 7 at A111.
199. J. Hadzialic, Decl., Ex. 7 at A115.
200. J. Hallum, Decl., Ex. 7 at A116.
201. J. Handley, Decl., Ex. 7 at A118.
202. J. Hartman, Decl. [Supp.], Ex. 7 at A122.
203. K. Henry, Decl., Ex. 7 at A125.
204. J. Highfill, Decl., Ex. 7 at A126.
205. J. Holdaway, Decl., Ex. 7 at A127.
206. R. Jewart, Decl., Ex. 7 at A132.
207. C. Jones, Decl., Ex. 7 at A133.
208. T. Kelly, Decl., Ex. 7 at A137.
209. U. Ketchum, Decl., Ex. 7 at A139.
210. G. Kohr, Decl., Ex. 7 at A142.
211. K. Lavelly, Decl., Ex. 7 at A146.
212. G. Linkous-Long, Decl., Ex. 7 at A148.

213. T. Lloyd, Decl., Ex. 7 at A150.
214. S. Loebertman, Decl., Ex. 7 at A151.
215. C. Malone, Decl. [Supp.], Ex. 7 at A.155
216. D. Martinez, Decl., Ex. 7 at A157.
217. S. Miller, Decl., Ex. 7 at A164.
218. J. Molina, Decl., Ex. 7 at A.166
219. K. Nelson, Decl., Ex. 7 at A168.
220. C. Newton, Decl., Ex. 7 at A169.
221. P. Nieto, Decl. [Supp.], Ex. 7 at A171.
222. V. Olson, Decl., Ex. 7 at A175.
223. J. Marriotti Orlando, Decl., Ex. 7 at A177.
224. D. Orosz, Decl., Ex. 7 at A178.
225. D. Orosz, Decl. [Supp.], Ex. 7 at A179.
226. E. Padureanu, Decl., Ex. 7 at A181.
227. H. Pagan, Decl., Ex. 7 at A182.
228. R. Parham-Finman, Decl., Ex. 7 at A184.
229. T. Payon, Decl., Ex. 7 at A187.
230. S. Roberson, Decl. and Decl. [Supp.], Ex. 7 at A.196, 197
231. M. Roberts, Decl., Ex. 7 at A200.
232. E. Roland, Decl., Ex. 7 at A201.
233. C. Roper, Decl., Ex. 7 at A202.
234. A. Marie Scaletti, Decl., Ex. 7 at A207.
235. M. Shade, Decl., Ex. 7 at A210.
236. D. Shelton, Decl., Ex. 7 at A211.
237. J. Shuff, Decl., Ex. 7 at A212.
238. K. Simons, Decl., Ex. 7 at A214.
239. A. Smith, Decl. [Supp.], Ex. 7 at A216.
240. K. Marie Smith, Decl., Ex. 7 at A218.
241. K. Smith, Decl., Ex. 7 at A219.
242. T. Snider, Decl., Ex. 7 at A221.
243. M. (Bagley) Spink, Decl., Ex. 7 at A222.
244. R. Sumen, Decl., Ex. 7 at A225.
245. A. MaisTarrab, Decl. [Supp.], Ex. 7 at A229.
246. M. Taylor, Decl., Ex. 7 at A230.
247. B. Tumlin, Decl. [Supp.], Ex. 7 at A236.
248. S. Turek, Decl., Ex. 7 at A237.
249. L. Williams, Decl., Ex. 7 at A244.

Declarations of Employees of Behalf of Sterling (approx. 600) SJI 0011129-0013659

Rebuttal Report of Dr. James L. Outtz

In the matter of

Laryssa Jock et al.

Claimants

v

Sterling Jewelers Inc.

Defendant

Equal Employment Opportunity Commission

Plaintiff

v

Sterling Jewelers Inc.

Defendant

January 13, 2014

This report has been prepared in rebuttal to the report of Dr. Margaret S. Stockdale, the expert for the Defendant. In her report dated October 10, 2013, Dr. Stockdale offers opinions and conclusions regarding the soundness of conclusions reached by this writer in response to questions put to me by counsel for Claimants. What follows is a brief summary of each question and my response followed by (a) Dr. Stockdale's opinion regarding my response, (b) the basis offered by Dr. Stockdale for her opinion and finally, (c) my response to her opinion.

As stated in my expert report dated June 21, 2013, I was asked by counsel for Claimants and Plaintiff to address several questions with regard to these cases involving Sterling Jewelers, Inc. ("Sterling"). Each question is discussed below.

1. Can the behavior and comments of Sterling senior managers and executives establish workplace norms that guide the behavior of managers elsewhere in the organizational hierarchy?

Relying upon research literature in the field of Industrial and Organizational Psychology and Human Resources Management as well as professional experience, I concluded that there is a sound theoretical basis to conclude that the behavior of leaders in an organization will be a model for good and bad behavior of those in lower positions. I concluded that leaders set an example in terms of organizational norms, climate and culture.

In addressing this issue, Dr. Stockdale reaches a similar conclusion. At her deposition, Dr. Stockdale testified she agreed in general with the principle that leaders are role models whose actions have a guiding influence on members of the organization.¹ Dr. Stockdale's agreement with this principle is buttressed by her published work. In an article coauthored by Dr. Stockdale, she states the following:

“We offer some evidence-based advice on how to develop healthy, harassment-free organizations.

¹ Stockdale Deposition, Pages 22:25 – 23:10

“First, policies do matter. Several researchers have established empirical relationships between the existence and enforcement of sexual harassment policies and reduced rates of sexual harassment (Gruber, 1998; Hulin et al., 1998; Offermann & Malamut, 2002). Training is important, too (see Gutek, 1997, Hill & Phillips, 1997); however, there have not been sufficient, adequate evaluations of training programs to understand how and under what conditions training is effective. More important, however, is leadership. Leaders role model behavior that will be emulated by employees. Leaders who condone sexist treatment of women send signals to likely perpetrators that their behavior will be tolerated (Pryor, Geidd, & Williams, 1995). Active leadership endorsement is critical for effective organizational change. Leaders have the power and resources to enforce sexual harassment policies, but they can also show their disdain or disinterest by tolerating behavior that violates the policy.

“Most importantly then, leaders set the climate. Offermann and Malamut (2002) analyzed the Department of Defense’s 1995 sexual harassment survey to look at the role that leaders’ commitment to stopping sexual harassment had on encouraging targets to report sexual harassment, satisfaction with the complaint process and on respondents’ job satisfaction and organizational commitment. Leaders’ commitment to stopping harassment was critical to the outcome measures above and beyond the mere presence of official policies and procedures designed to reduce harassment. Moreover, the analyses suggested that policies and procedures were only minimally effective in improving the climate.”

Stockdale, et al., *Coming to Terms with Zero Tolerance Sexual Harassment Policies*, 4:1

Journal of Forensic Psychology Practice, (2003), attached as Ex. A. Given that Dr.

Stockdale’s writings in the area of modeling and the statements she makes in her report acknowledging that modeling of leader behavior occurs, I have concluded there is little disagreement that modeling of the behavior of Sterling executives and managers could have guided the behavior of those subordinate to them.

2. Is the evidence in the record of behavior and comments about women and women employees attributed to executives and senior managers at Sterling sufficient to have established workplace norms for guiding the behavior of managers elsewhere in the organizational hierarchy?

In order to address this question, I examined approximately 240 sworn declarations regarding the alleged behavior of Sterling executives and managers as well as the deposition

transcript of Sterling Executive [REDACTED] among others. I identified sixteen Sterling [REDACTED] Executives who are alleged in those sworn declarations to have engaged in inappropriate behavior including Unwanted Sex-Related Behavior. Having examined the content of the sworn declarations and established that they were provided by employees from different regions of the country who occupied positions as supervisors as well as non-supervisors, were males as well as females, and who gave, in many instances, firsthand accounts that were highly detailed and consistent, I concluded that the allegations were reliable, and resulted in a climate and culture at Sterling in which female employees and their work are devalued when compared to that of males.

Even though she has written that the behavior of leaders in an organization can set the climate and culture, Dr. Stockdale faults me for not considering the positive behaviors of Sterling executives, managers and supervisors. This criticism is unfounded. I did not find evidence of such positive behavior in the record. The only evidence of such behavior to which Dr. Stockdale referred was the existence of certain training programs, which are simply policies not behaviors.² Dr. Stockdale did not provide in her report or in her deposition testimony a single example of positive behavior by Sterling executives, managers and supervisors that is modeled by lower level employees. What is more troubling is that Dr. Stockdale did not even attempt to determine whether such behavior existed. Dr. Stockdale failed to interview a single Sterling manager or employee since being retained in this case.³ Although Dr. Stockdale visited Sterling headquarters on one occasion she only met with attorneys for the defendant.⁴ Dr. Stockdale did

² Stockdale Deposition, Pages 163:1 -169:3

³ Stockdale Deposition, Pages 62:22-63:23

⁴ Stockdale Deposition, Pages 16:10-18:4

not visit a single Sterling store in her capacity as an expert for the defendant. She admitted to visiting three stores near her home but only as a customer.⁵

The sworn declarations produced by Claimants consistently contain allegations of inappropriate behavior by higher-level male employees directed at lower-level female employees. On page 18 of my report I conclude that if the allegations made by declarants are reliable, and I believe they are, the result would be a climate and culture at Sterling in which female employees and their work are devalued when compared to male employees. Dr. Stockdale faults my conclusion even though she assumes the allegations in the sworn declarations of claimants and employees are credible.⁶ I found her criticism of my conclusion to lack merit.

- 3. If the answer to Question 2 is yes, is the evidence in the record of behavior and comments about women and women employees attributed to executives and senior managers at Sterling capable of influencing the exercise of discretion in pay and promotion decisions made by managers with such responsibilities, given that:**
 - a. Women have held managerial positions at various levels of Sterling, as reflected in the workforce data available to you; and**
 - b. Sterling has had in place a policy prohibiting sex discrimination at all levels of its workplace and a policy prohibiting managers at all levels from fraternizing with employees under their direct or indirect supervision.**

In addressing this question I first point out that the evidence in the record shows that knowledge of the behavior and comments demeaning to women and women employees by Sterling executives and senior managers is widespread throughout the Company. The record indicates that much of this behavior takes place at the annual managers meeting in ██████████, Florida. Since all managers at Sterling are required to attend this meeting, it provides a ready opportunity for managers to observe each other and share experiences. There are many examples of alleged inappropriate behavior by Sterling executives and senior managers

⁵ Stockdale Deposition, Pages 56:13-57:14; 59:1-60:16

⁶ Stockdale Deposition, Pages 163:13-165:25

occurring at this meeting. I also cite testimony of Sterling executives that they witnessed inappropriate behavior by other executives. Executive [REDACTED] gave testimony that the company retained individuals to attend the Annual Managers' Meeting [REDACTED] just to monitor the Managers' behavior. However, the sworn declarations also describe inappropriate behavior, including Unwanted Sex-Related Behavior, occurring all the way down to the store level. Managers work closely with each other once they leave the Annual Managers' Meeting [REDACTED] and return to their home regions, districts and stores. This allows upper level managers to influence subordinates.⁷

I have been asked however to consider the possible mitigating effect that having women in managerial roles might have on the prevalence of Unwanted Sex-Related Behavior. I cite scientific literature which shows that although the presence of women in an organization can affect the prevalence of Unwanted Sex-Related Behavior, the organizational climate is the most important factor by a considerable margin. Dr. Stockdale agrees that the scientific literature shows organizational climate is the most important factor, but argues that the relative difference in the importance of organizational climate and women in managerial roles is smaller than I have described.⁸ Her argument, however, is based on a single research study⁹ whereas the larger difference that I described is based on a “meta-analysis” examining over 31 different studies with a total participant level of over 40,000.¹⁰ In addition, examination of female representation at Sterling shows that the proportion of women diminishes substantially moving from the sales

⁷ I also referred to Unwanted Sex-Related Behavior exhibited by managers in other settings than the Annual Managers Meeting. See Report at 14-17, 20 (collecting examples). Thus Dr. Stockdale's criticism that I relied too heavily on evidence from that meeting seems in error, as I referred to considerable evidence from other sources. See Stockdale Report at 43.

⁸ Stockdale Report at 48.

⁹ Fitzgerald et al. (1997), Antecedents and consequences of sexual harassment in organizations: A test of an integrated model, *Journal of Applied Psychology*, 82, pp. 378-389. See Stockdale Report at 48-49,

¹⁰ Willness et al. (2007), A meta-analysis of the antecedents and consequences of workplace sexual harassment, *Personnel Psychology*, 60, pp. 126-162, cited in Outtz Report at 22-23.

associate level (73.1%) to the level of vice president (32.4%). Therefore the relative influence of men increases substantially as one moves upward in the company. Finally, on pages 25 through 27 of my earlier report I point out that the declarations of female employees at Sterling including those of female managers indicate the culture at Sterling was such that women employees were reluctant to complain about Unwanted Sex Related Behavior for fear of retaliation. They also felt that managers were not sufficiently punished for such behavior. In such an environment there is pressure to conform to the culture. The mere presence of women in managerial positions does not mean that the Unwanted Sex Related Behavior will be confronted to a greater degree than otherwise would be the case.

I was also asked to consider the impact of Sterling's policies prohibiting sexual harassment and fraternization between managers and subordinate employees. Dr. Stockdale claims that I do not give these policies sufficient weight in determining whether there is a climate for Unwanted Sex-Related Behavior at Sterling.¹¹ I give the policies consideration but the mere existence of such policies does not in and of itself diminish the likelihood of Unwanted Sex-Related Behavior. It is the implementation of the policies that makes the difference. Dr. Stockdale acknowledges as much. She takes the position that policies are important but implementation is more important and the behavior of leaders is critical. (Stockdale, et al. 2003, P.74 – 75). Dr. Stockdale also points out in her published research that zero tolerance policies come across as tough sounding but may mask an inability to get to the root cause of sexual harassment or promote healthy workplaces (Stockdale, et al. 2003 p. 71-75). The presence of such policies here therefore has not been shown to have had an appreciable effect on curbing Unwanted Sex-Related Behavior or its effects on other employees in the workplace.

¹¹ Stockdale Report at 61-64.

It is also instructive to note that Dr. Stockdale admits she made no attempt to determine the effectiveness of the procedures used by Sterling. As an example, Dr. Stockdale examined a sample of sexual harassment investigations that had been conducted by Sterling between 2001 and 2012. Dr. Stockdale admits that she does not know the origin of this sample¹² and did not consider it to be representative of the sexual harassment investigations conducted by Sterling.¹³ She nonetheless concluded from her review of the investigations that they were “systematic and comprehensive.” However she could not offer an opinion as to their effectiveness.¹⁴ She gave the following testimony:

“Q. On page 55 of your report at the bottom you say: The internal investigation procedures for responding to complaints of sexual harassment are systematic and comprehensive. Do you see that?

A. Yes.

Q. I assume you’re talking about Sterling’s process.

A. Yes.

Q. How did you determine they were effective? What methodology did you use?

A. Well, I didn’t say effective. I said systematic and comprehensive.

Q. Did you form an opinion as to whether they were effective?

A. I wasn’t asked to, and I believe that systematic and comprehensive were the terms that I felt described these policies.” (Stockdale Dep., Page.200.8-200.24)

Dr. Stockdale used her examination of these complaint investigations however to support her conclusion that Sterling devoted sufficient resources to complaints of sexual harassment.

Beginning at page 29 of my report I offer the opinion that attitudes of Sterling executives and senior managers can influence compensation decisions because (a) some of those same executives and managers helped design the system for determining compensation and (b) the

¹² Stockdale Deposition, Pages 193:1-14

¹³ Stockdale Deposition, Pages 189:8-20; 190:14-20

¹⁴ Stockdale Report, at 55

senior managers and executives at Sterling responsible for determining employee compensation have significant discretion in determining that compensation. I point out that the compensation offered to employees, as well as persons seeking employment, depends upon the perceived value of that person to the company. Therefore behavior by managers and senior executives that demeans women can influence their perceived value both at the time of hire and during the course of their employment. This is particularly true if those making the compensation decisions are managers who have considerable discretion in making those decisions. It is more likely than not that the Unwanted Sex Related Behavior that demeans and devalues women and is modeled from Sterling's executives down, influenced pay and promotion decisions to women's detriment at Sterling and would be consistent with any gender disparities in pay and promotion at Sterling.

Dr. Stockdale disagrees with my opinion, claiming that Sterling's Wage Rate Generator greatly restricts managers' discretion in determining starting pay. She fails to recognize however that senior managers and executives at Sterling responsible for determining employee compensation have significant discretion in setting that compensation. As an example, I point out in my earlier report that managers have had considerable discretion as to what factors to consider in determining how to value prior job experience, which the company regards as the basis for setting starting pay rates.¹⁵ Before 2009, managers had wide discretion as to which job experience should be given credit in setting starting pay rates and the amount of such credit to be given.¹⁶ In 2009, Sterling instituted its Wage Rate Generator (WRG) that prescribed several types of prior job experience to credit in setting starting pay rates but, at least until 2012, managers were permitted to choose starting pay levels to offer new hires. Just as importantly, the

¹⁵ Luth I Dep. at 183:10-25 (prior job experience is "primary driver for setting starting pay")

¹⁶ Luth Dep. III (Apr. 4, 2013) at 52:6-54:17, 57:22-64:4 .

background qualifications used to determine the level of pay are interpreted by the District Manager before being placed in the Wage Rate Generator .¹⁷ The process for determining which prior job experience to credit in setting starting pay and how much to credit it is subjective and the options for starting pay are left to the discretion of the District Manager.¹⁸ It is my opinion, therefore, that the behavior toward women exhibited by Senior Managers and Executives at Sterling likely influenced pay decisions, such as those involved in setting starting pay rates because those decisions require managers to make judgments about the value of women to the company and value them accordingly in applicable pay decisions.¹⁹

I hold similar opinions regarding the extent to which Unwanted Sex-Related Behavior likely influenced the exercise of discretion in identifying and selecting candidates for promotion through Sterling’s Succession Planning program. As I explained in my opening report at page 35, Sterling provides seven factors to be used in identifying candidates for promotion, including subjective factors like “teamwork,” “integrity,” and “communication.” Although Dr. Stockdale believes these factors were adequately defined to curb the influence of Unwanted Sex-Related Behavior on the manager’s discretion, the evidence shows that the guidance actually provided is simplistic and does not anchor these factors in observable behaviors sufficient to reduce or eliminate the opportunity for the exercise of bias. Moreover, Sterling failed to assign

¹⁷ Luth Dep I (November 12, 2012) at 153:23-154:17.

¹⁸ For example, Sterling’s own executives could not agree on what kind of jobs qualify as prior sales experience in the Wage Rate Generator. *See e.g.*, Email and Attachment from Mike Lynch, SJI 239338-40 attached as Ex. B. *See also* Luth III Dep. at 54.24-61.20 (explaining that document was not released to the field because Sterling’s executives could not agree on what qualified as prior sales experience).

¹⁹ See the declarations of the following witnesses for additional examples of sworn testimony regarding stereotyped remarks about women employees: Decl. of Susan Crump, para. 9; Decl. of Melinda Small, para. 10,20; Decl. of Donald Davison, para. 7, 15; Decl. of Dean Huffman, para. 7 Decl. of Richard Sumen, para 9; Decl. of Vanessa White Decl. para 11, 21; Decl. of Scott Smith, para. 5.

relative weights to these factors, thereby permitting these managers to assign as much or as little weight to a particular factor as they wish, a conclusion to which Dr. Stockdale does not respond.

Additional Deficiencies in Dr. Stockdale's Conclusions

The issue of Qualifications

Dr. Stockdale asserts that I do not have the appropriate expertise to offer the opinions contained in my report. She admits however that she made little if any effort to determine my qualifications.²⁰ Dr. Stockdale also admitted that she knows of no certification within the field of industrial and organizational (I/O) Psychology in the areas of sex or gender issues.²¹ Dr. Stockdale knows of no certification in these areas because there is no certification in gender discrimination or organizational culture in industrial and organizational psychology. All of these areas fall within the mosaic of topics that comprise the field of I/O Psychology.²²

As noted in my curriculum vitae, I have published widely in I/O Psychology on discrimination-related topics such as adverse impact, assessment, selection and promotion, organizational staffing and personnel psychology. I studied at the University of Maryland under Dr. Benjamin Schneider, who is recognized as a pioneer in the area of organizational climate and considered an eminent authority on that topic. . In addition, I have personally evaluated and opined on organizational culture and climate in my capacity as an expert witness in several cases, including *McReynolds v. Merrill, Lynch, Fenner, Pierce and Smith* and *Guitierrez v. Johnson & Johnson*. In these cases, I assessed either how modeling of behavior by executives and managers affected the company, the effects of leadership in the company, or the tone and climate managers and executives set at the company. I was selected by the journal *Personnel Psychology* (one of the most respected peer reviewed journals in the field of I/O) to review “The Psychology and Management of Workplace Diversity” a book by Sterling’s expert Dr. Stockdale.

²⁰ Stockdale Deposition, Pages 147:18 – 148:7

²¹ Stockdale Deposition, Page 23:7-10

²² I/O Psychology is generally defined as the “scientific study of human behavior in organizations and the work place,” and entails the application of the rigor and methods of psychology to workplace related issues such as assessment, selection, training, organizational development, performance, talent management, coaching, and work-life balance.

Methodology Used

Dr. Stockdale faults the methods that I used in formulating my opinions. I applied several reliable methods in conducting my review and analysis of the evidence in the record in this case. These methods included examining all of the declarations provided by Claimants and all of the declarations provided by Sterling.²³ This meant it was not necessary to estimate whether the declarations were a representative sample. They constituted the entire population of declarations in the record. I verified the consistency of the information provided in claimants' declarations by interviewing several claimants and comparing the information provided with the content of their declaration. I examined a total of 14 deposition transcripts of Sterling upper management to compare their testimony with the allegations contained in the declarations. I compared the policies and procedures described in Sterling documents and the deposition transcripts of sterling upper management with best practices in industrial and organizational psychology. Finally I applied relevant psychological literature in industrial and organizational psychology to the evidence in the case. These are methods that I commonly used and that have been used by I/O psychologists who have served as expert witnesses in the cases in which I have been involved over the past 30 years.

Dr. Stockdale, on the other hand, reviewed none of the declarations in the record in this case. She reviewed only 46 internal investigation files of complaints filed by Sterling employees from which she concluded that Sterling's complaint investigation process is "systematic and comprehensive" but she admitted to having no idea how many complaints were investigated at Sterling, or how representative they were of the universe of employee complaints.²⁴ She testified to believing Sterling's counsel selected the investigation files for her to review and that they were "selected to rebut the allegation that Sterling did not engage in systematic investigation."²⁵ Therefore, while Dr. Stockdale believed my methodology was insufficiently scientific, the methodology she pursued led her to rely on a sample of complaint investigations selected by others and which she had no basis to know if it was representative of the entire population of investigation files.

²³ Claimants produced approximately 240 declarations. Sterling produced approximately 600 declarations. Dr. Stockdale testified that she did not read any of them.

²⁴ Stockdale Deposition, Pages 190.9-192:4.

²⁵ Stockdale Deposition, Pages. 193:1-7.

Reliance on Irrelevant Research Literature

Dr. Stockdale's opinions are based upon theories that have little relevance to the facts in this case. As an example, beginning on pages 11 through 18 of her report, she presents a discussion of social science research and theory and women's career dilemmas. However she failed to connect this research in any way to what actually has happened at Sterling.²⁶ Even when Dr. Stockdale chose information from Sterling to support her opinions and conclusions, that information was had no bearing on the issues in this case. As an example, when searching for information regarding whether the workplace conditions at Sterling are tolerant of sexual harassment, Dr. Stockdale chose to analyze the results of employee surveys sponsored by Sterling. She chose this data even though she knew that the surveys provided no information about sexual harassment at Sterling and were not formulated to elicit the kind of information normally sought in instruments accepted as appropriate measures of identifying workplace tolerance for sexual harassment.²⁷

Materials Relied Upon

In connection with my preparation of this rebuttal report, I relied upon the report and deposition testimony of Dr. Margaret Stockdale, the article by Stockdale, et al. 2003, email and attachment concerning a potential clarification to the Wage Rate Generator and the related Luth deposition testimony, the 46 complaint investigation files referenced in Dr. Stockdale's report, in addition to my expert report submitted on June 21, 2013.

Summary

My opinions in this case, as presented in my expert report, are unchanged for the following reasons:

²⁶ Stockdale Deposition, Pages 81:15 - 82:25

²⁷ Stockdale Deposition, Pages 149:12-150:8;151:18-153:7

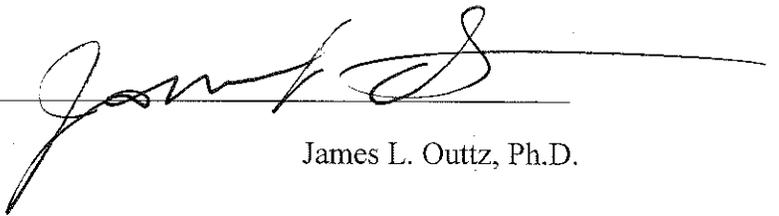
- Dr. Stockdale has not presented relevant evidence based on the facts in this case that substantiates the deficiencies she claims to have identified in my methodology, opinions or conclusions.
- Dr. Stockdale's sworn testimony does not support the assertions made in her report.
- Dr. Stockdale's sworn testimony and her published professional research as attached in Ex. A support my opinions and conclusions.

The opinions and conclusions presented in my earlier report are unchanged.

Respectfully submitted,

1-13-14

Dated


James L. Outtz, Ph.D.

James L. Outtz, Ph.D.

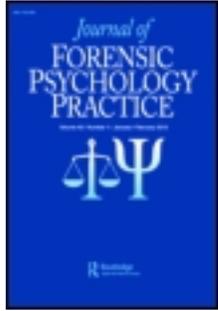
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Coming to Terms with Zero Tolerance Sexual Harassment Policies

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Coming to Terms with Zero Tolerance Sexual Harassment Policies

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ABSTRACT. Although the term “zero tolerance” (ZT) has been used to describe sexual harassment policies, among other policies against undesired behavior, for several years, a zero tolerance industry has mushroomed since the Supreme Court fashioned the “affirmative defense” in their twin 1998 sexual harassment decisions. We take a critical look at policies noting that no clear definition exists, although either “absolutist” or “symbolic” classes of definitions appear to guide ZT proponents. As such ZT policies run the risk of increasing backlash against women, obfuscating proactive organizational climates, and emphasizing “form” over “substance.” We recommend that employers look at the root causes of sexual harassment and provide leadership in role modeling egalitarian, respectful work environments. *[Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <http://www.HaworthPress.com> © 2004 by The Haworth Press, Inc. All rights reserved.]*

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KEYWORDS. Zero tolerance policies, sexual harassment, *Faragher/ Ellerth* affirmative defense, leadership

Since the Tailhook sexual harassment incident of 1991, zero tolerance has been an increasingly popular buzzword to succinctly explain what organizations should do to eradicate sexual harassment and a host of other discriminatory or unwanted and legally troublesome forms of behavior in the workplace, such as racial discrimination and harassment, workplace violence, fraud, and drug use. Such guidance has become especially ubiquitous in the five years since the Supreme Court handed down twin landmark sexual harassment decisions (*Burlington Industries v. Ellerth*, 1998; *Faragher v. City of Boca Raton*, 1998). In those cases, the Court fashioned an affirmative defense for employers whose supervisors have engaged in sexual harassment that has not resulted in a tangible employment action against a subordinate. The employer may avoid liability by demonstrating both: “(a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to avoid harm otherwise” (*Burlington Industries v. Ellerth*, 1998, p. 176).

In response to these rulings, and perhaps the fear of costly settlements or judgments and public relations concerns, a veritable zero tolerance industry has mushroomed in the past several years. Consultants and lawyers have developed and widely disseminated zero tolerance policies against harassment in the workplace as their number one antidote to protect an organization from costly employee litigation (e.g., Cornish, 1998; Eyres, 2002; Greenebaum, Doll & McDonald, 2002; Moore & Fingar, 1999). “The linchpin in preventing and defending sexual harassment claims is a ‘zero tolerance’ policy,” say the attorneys of one firm (Powers, Kinder, & Keeney, 1999). Another firm recommends that “corporate management communicate the ‘zero tolerance’ policy to all employees on an annual basis” (Maatman & Cowman, 1998). One is hard pressed to find defense attorneys willing to weigh in against zero tolerance (ZT) programs. A recent search uncovered just a few cautionary articles, which warned that a harasser fired under a zero tolerance policy might sue for wrongful discharge (Sulloway & Hollis, 1999; Silbergeld, 1997).

With support for zero tolerance so widespread, one might conclude that such policies are proven effective methods for discouraging and

eliminating sexual harassment from the workplace. Yet such is not the case. Instead, a zero tolerance approach has been widely embraced without clear definitions or particulars of the approach, without considering the potential pitfalls of the policies, and without empirical support for their efficacy in preventing or addressing sexual harassment in the workplace. In this essay, we scrutinize these three gaps in the promulgation and practice of zero tolerance policies, looking at what we know empirically versus what is still speculation at this point. In so doing, we also take a preliminary look at how zero tolerance policies and concepts have emerged in the case law. Finally, we suggest alternative frameworks based on research findings that can help organizations eradicate sexual harassment.

WHAT IS ZERO TOLERANCE?

Zero tolerance, a concept that first appeared in the early 1980s, is generally used to describe a broad range of strict, relatively inflexible governmental and private institutional policies prohibiting societal ills such as drug abuse, environmental pollution, violence, homelessness, skateboarding, trespassing, and racial intolerance (Henault, 2001; Peden, 2001; Skiba & Peterson, 1999).

Zero tolerance has not been consistently defined nor consistently implemented. Companies are increasingly exhorted to develop zero tolerance sexual harassment policies to protect them from liability (see, e.g., Abel & Claxton, 1998; Buhler, 1999; Konop, 2001; Moore, Herff, Gatlin-Watts & Cangelosi, 1998), though they are given little specific guidance and zero tolerance is rarely defined. The defining feature of such a policy seems to be rigidity. Having determined that a proscribed act has occurred, an administering authority is given little discretion to tailor an appropriate response. Instead, punishment, often quite severe, is dispensed without regard to the proportionality of the transgression or any mitigating circumstances.

Where definitions can be gleaned, there is little consistency. We have discerned two general classes of definitions.¹ The first, which we dub the *absolutist approach*, (e.g., Baker & Daniels, 1998; Berta, 2002; Deliket & Swanson, 1999; Konup, 2001) conceptualizes zero tolerance as either a broad based prohibition of “all conduct with sexual overtones” (Schultz, 2003), or a policy requiring the strongest possible penalty, termination, when investigation reveals that harassment has occurred in the legal sense (Perkovich & Rowe, 2000). In a text de-

signed for practicing managers, Orlov and Roumell (1999) exemplify this type of definition:

A zero tolerance statement should be the first element in your policy . . . Your company, and you personally, must set an example by aggressively conveying the message that sexual harassment is strictly prohibited and will never be tolerated in any form. It is even advisable to go one step further by including a statement that no inappropriate sexual conduct will be tolerated, even if it does not rise to the level of sexual harassment in the legal sense. Sing it loud and clear and practice it every day with your workforce, remembering that *zero tolerance* means “never.” (p. 45)

We found a second type of ZT definition in currency as well, an approach we call the *symbolic approach*. This class of ZT definition appears to be used to signal to stakeholders, such as employees, the legal community, or the public, that the company takes sexual harassment seriously, and by extension, should be shielded from liability. For example, employers have been told that a basic element of an anti-harassment policy is “a clear strong statement of the employer’s commitment that it will not tolerate sexual harassment, such as a ‘zero tolerance’ statement from the employer’s top management”(Outten, Moss, & Ruan, 2001, p. 201).

Symbolic approaches to ZT are not necessarily wrong, in our view. Symbolic approaches may permit flexible responses (e.g., not always having to terminate the perpetrator, or having ways to distinguish between trivial and serious offenses). Some of the employers engaged in such signaling are actually doing a good job at substantively curing harassment. Managers at Mitsubishi, an employer subject to a landmark settlement with the Equal Employment Opportunity Commission emphasizing the adoption of a zero tolerance approach to sexual harassment, note that the approach “indicates a corporate attitude that any complaints will be dealt with swiftly and equitably”(HRWire, 2000). Given its recent, highly publicized sexual harassment problems, Mitsubishi may be particularly concerned about any possible hostility in the work environment. Indeed, the automaker agreed to allow three court-appointed monitors observe its efforts to eradicate sexual harassment, and in May 2001 received a clean bill of health from them (Aronson, 2002).

Yet the symbolic definition is a potentially dangerous one as well. Its presence may be too easily conflated with employer good faith and its

absence with an employer uninterested in the conditions it subjects its employees to. It may be tempting for employers to symbolically adopt ZT language purely for litigation prevention without really addressing the root causes of harassment and discrimination.

In summary, there appears to be no clear, concrete consensus about the meaning and scope of zero tolerance sexual harassment policies. Employers are simply advised to have a zero tolerance policy, but are left to interpret for themselves what this means. Management consultants who advocate zero tolerance policies all agree that, especially in light of the *Ellerth/Faragher* affirmative defense, it is imperative to have a strong “zero tolerance” policy in order to protect companies from potential liability. What is missing, however, is a critical look at the implications of such policies in practice. Below we attempt such a critique.

POTENTIAL PITFALLS OF ZERO TOLERANCE POLICIES

The concept of a zerotolerance policy is attractive to those who do not simply wish to protect employers from liability but also wish to eradicate sexual harassment from the workplace. Zero tolerance seems to say what we hope it means: No harassment will be tolerated, and all infractions will be punished. Zero tolerance is a catchy term, and it fits with the current culture of intolerance for wrongdoing. The idea of zero tolerance would seem to go over well with those of us who have been trying to raise consciousness about gender issues in the workplace—if you don’t know where to draw the line, we’ll draw it for you: No sexual behavior in the workplace—period. But simplicity has its hidden costs. We focus on three potentially undesirable consequences of zero tolerance: the possibility that zero tolerance can (a) increase backlash against those who strive for gender equality, (b) undermine an organization’s credibility when actions inevitably fail to meet ZT standards, and (c) direct greater attention to form rather than substance.

Sexism and Backlash. One of the dangers inherent in a rigid formulaic response to complicated human behavior is that punitive measures may well be taken in response to a range of offending behaviors, from serious to trivial. Such a response can produce a backlash against the reforms, such as some believe occurred in reaction to gender equality gains in the 1970s and 80s (see, e.g., Russell, 1974; Whaley, 2001). Whether such a backlash actually occurs or not, it is certainly the perception of targets of harassment that they do not want to be stigmatized

as a “complainer.” In fact, evidence suggests that, generally speaking, most women do not formally file sexual harassment complaints (percentages of women complaining range from approximately 5 to 24, depending on the study), and many do not even tell others at work about their experiences (see, e.g., Brooks & Perot, 1991; DuBois et al., 1998; Fitzgerald, Swan & Fischer, 1995; Gutek, 1985; Schneider, Swan & Fitzgerald, 1997; USMSPB, 1981; 1995). The low level of reporting appears to be the case even among relatively recent studies conducted when employers are increasingly likely to have adopted a formal sexual harassment policy and set up mechanisms for enforcing it. For example, a survey of approximately 5,000 federal employees conducted by the U.S. Merit Systems Protection Board (1995) found that only 12% told a superior or took formal action. Given this empirical reality, if absolutist ZT policies are strictly enforced, then it puts women into the uncomfortable, and perhaps untenable, position of having to report even minor incidents in order to present a credible case and avoid dismissal under the affirmative defense, as well as creating the impression that women must be treated with kid gloves.

Policies vs. Actions. Hulin, Fitzgerald, and Drasgow (1996) discussed the concept of “organizational tolerance for sexual harassment” which they define as the shared perceptions among relevant group members of the contingencies between unwanted social-sexual behavior and organizationally imposed consequences. A climate that is tolerant of sexual harassment is one where group members believe that it would be risky for a woman to complain of sexual harassment, that she would not be taken seriously, and that nothing serious would be done to the initiator (perpetrator). Hulin et al. found, in their study of a large public utility company, that concentrated efforts to eliminate sexual harassment (e.g., prevention and training efforts) helped establish a climate of intolerance for sexual harassment.

It makes sense that zero tolerance policies should go a long way in helping to create climates that are intolerant of sexual harassment. However, zero tolerance may set a standard that is too difficult to achieve, and therefore undermine the efforts to positively influence the climate and change behavior. Climates are not formed on the basis of written rules and procedures, but on the alignment or lack thereof between behavior and policy. Once employees sense that managers do not really practice zero tolerance, then not only will the climate be perceived as tolerant of sexual harassment, but the organization may lose credibility among its employees and other stakeholders. The U.S. Navy had its share of public-relations nightmares when their cover-up and

mishandling of the Tailhook incident ran counter to their official zero tolerance policy (Violanti, 1996). However, to date, there is very little empirical research on how well zero tolerance policies are administered, how effective they are in creating gender equality, whether they foster or inhibit target complaint, and whether they deal at all with the underlying context and causes of sexual harassment in the workplace.

Form over Substance. In a previous article, one of the authors (SBR) noted that organizations are encouraged to implement various policies and procedures that will protect them from equal employment law litigation (Bisom-Rapp, 1999). Examples include making sure that performance appraisals document negative as well as positive job performance (to justify termination decisions), proliferating training programs, and paying excruciating attention to policy. The presence of these policies and procedures themselves often signal triers of fact that the company takes EEO (including sexual harassment) seriously and, therefore, should not be held liable for damages that have occurred within its bounds. Bisom-Rapp argued that employers pay more attention to bulletproofing themselves against liability than to actually creating discrimination-free work environments that encourage all employees to reach their full potentials. Zero tolerance fits the bill for tough-sounding policies that signal organizational resolve to eliminate sexual harassment, but they may mask an inability to get at the root cause of sexual harassment or to promote healthy workplaces. In other words, zero tolerance policies may help organizations get off the hook, but they may not resolve the underlying problems.

Sherwyn, Heise and Eigen (2001) analyzed the first 72 post-*Ellerth* and *Faragher* opinions involving employers' motions for summary judgment to determine, among other things, the effectiveness of various features of the affirmative defense which have promulgated the ZT zeitgeist. The only critical factor that predicted summary judgment in favor of the employer was whether the employer had articulated and disseminated a sexual harassment policy that made alternative reporting mechanisms available to their employees and which had no other defects. Going beyond these steps, such as providing in-house training and establishing a crisis hotline for employees, did not bolster an employer's case. In fact, practices that might have served to encourage employees to complain had a detrimental effect on employers' outcomes. The message, then, is to put a strong policy in place but don't work too hard to make it usable. We are concerned, in keeping with the study's conclusions, that the proliferation of zero tolerance policies may do nothing more than provide an easy signal to the court that the employer has es-

tablished an affirmative defense, which then gives the employer a significant but not necessarily warranted edge on the litigation playing field.

HOW HAVE ZT POLICIES FARED IN THE COURTROOM?

Although little empirical evidence exists that addresses ZT efficacy, we were able to take a preliminary look at how companies with ZT policies fare in the court. This analysis, albeit based on a very small population of cases, shows that ZT may, in fact, signal compliance with the affirmative defense. We found 14 relevant cases where an employer asserted the existence of a zero tolerance policy as a defense to liability. In three of those cases, the employer failed to avoid liability despite maintaining a zero tolerance policy (*Gaines v. Bellino*, 2002; *Kennedy v. Walmart*, 2001; *Gaspard v. J & H Marsh & McLennan*, 2000). These cases turned on the issue of the effectiveness (or lack thereof) of the proffered policies given delays of between three to ten months in investigating egregious harassment that was evidently occurring.

Much less attention was paid to policy effectiveness and overall workplace culture, however, in eleven of the cases in which a zero tolerance policy precluded liability for harassment that the plaintiff had experienced. Some of the cases involved employer investigations and/or disciplinary action in response to an employee complaint (e.g., *Borrero v. Collins Building Services*, 2002; *Olsen v. H.E.B. Pantry Foods*, 2002; *O'Dell v. Trans World Entertainment Corp.*, 2001; *Schemansky v. California Pizza Kitchen, Inc.*, 2000; *Hall v. Hebrank*, 1999; *Stalnaker v. K-Mart Corp.*, 1996). In others, the existence of the policy coupled with the employee's failure to complain about the harassment constituted the liability shield (e.g., *Woodward v. Ameritech Mobile Communications*, 2000; *Taylor v. Texas Dept. of Criminal Justice*, 2000). Although it is difficult to draw conclusions based on so small a sample, such results seem to underscore the validity of ZT advocates' claims that these policies, when administered diligently when a complaint is filed or when the plaintiff fails to complain, are effective litigation prevention devices. Did the ZT policies put an end to the harassment without avoiding the pitfalls noted above? We don't know. But, to date, it appears that proffering a ZT policy puts the firm on the winning side of a law suit: a strong incentive to adopt the ZT approach (see West, 2002).

**COMING TO TERMS WITH ZERO TOLERANCE
AND CREATING EFFECTIVE STRATEGIES
TO ELIMINATE SEXUAL HARASSMENT**

Although the policies may be effective compliance mechanisms, examining the zero tolerance movement cannot help but give one pause. The campaign itself seems unable to generate a clear and consistent definition of zero tolerance, creating confusion among those whose job it is to administer the policies, those who labor under them, and the legal decision-makers who must determine whether under the circumstances of a given case, an employer's actions regarding such a policy entitle it to avoid liability under the *Ellerth/Faragher* affirmative defense.

To the extent that ZT is conceptualized as an absolute prohibition of conduct with sexual overtones, the movement eclipses how serious harassment actually manifests itself in the workplace, and obscures as well the economic disadvantage experienced by working women (Schultz, 2003; Schultz, 1998). In the process, such an approach to harassment prevention stigmatizes women branding them as hypersensitive and in need of protection (Fisk, 2001).

If zero tolerance is defined as requiring the termination of the perpetrator whenever harassment is determined to have occurred, it will preclude employers from fact-sensitive responses to the workplace problems they encounter. Furthermore, it does not guarantee that all sexual harassers will be punished. Although the zero tolerance policy leaves little leeway in determining what to do should harassment occur, a way to avoid meting out the punishment prescribed by this one-size-fits-all solution is to determine that the specific behavior in question cannot be proven to have occurred or it did not meet the organization's definition of sexual harassment.

The second category of zero tolerance definition fares no better than the first. Using the term symbolically to indicate that the employer takes sexual harassment seriously runs the risk of endorsing a form-over-substance approach to achieving workplace equality (Bisom-Rapp, 2001). There is danger in enshrining the terminology and certain procedural formalities in the case law as a touchstone for employer good faith, for it deflects attention away from two important issues. Specifically, the fetishizing of harassment policies neglects how most victims respond to harassing situations, which, as the research literature shows, is to use informal coping mechanisms rather than to resort to formal process (Beiner, 2001a; Beiner, 2001b; Krieger, 2001; Grossman, 2000; Fitzgerald, Swan, & Fischer, 1995; Gutek, 1985). Moreover, blindly ac-

cepting zero tolerance rhetoric without critically evaluating the pitfalls of such policies slows the progress of determining what really should be done to eliminate harassment.

Is there a better approach? In writing about zero tolerance in K-12, Nan Stein (2001) states that instead of zero tolerance, organizations should practice "zero indifference." Instead of rigidity and bullet-proofing, organizations should strive to address the root causes of harassment such as indifference to sexism, institutional barriers to equality, and inept management. The prevailing theories of the causes of sexual harassment (e.g., Gutek's Sex-Role Spillover theory, 1985; Pryor's Likelihood to Sexually Harass theory, 1987; and Hulin et al.'s Climate theory, 1996) all implicate factors that are under organizational control. Sexualized, gender-skewed workplaces, high power differentials between women and men, indifferent or condoning supervision, and a history of neglect are all ingredients in the primordial soup of harassment. We concur with Bell, Quick, and Cychota (2002) that organizations should strive to become healthy entities that possess an "open, trusting, affirming culture of mutual individual respect" (p. 162). We offer some evidence-based advice on how to begin to develop healthy, harassment-free organizations.

First, policies do matter. Several researchers have established empirical relationships between the existence and enforcement of sexual harassment policies and reduced rates of sexual harassment (Gruber, 1998; Hulin et al., 1998; Offermann & Malamut, 2002). Training is important too (see Gutek, 1997; Hill & Phillips, 1997); however, there have not been sufficient, adequate evaluations of training programs to understand how and under what conditions training is effective. More important, however, is leadership. Leaders role model behavior that will be emulated by employees. Leaders who condone sexist treatment of women send signals to likely perpetrators that their behavior will be tolerated (Pryor, Geidd, & Williams, 1995). Active leadership endorsement is critical for effective organizational change. Leaders have the power and resources to enforce sexual harassment policies, but they can also show their disdain or disinterest by tolerating behavior that violates the policy.

Most importantly then, leaders set the climate. Offermann and Malamut (2002) analyzed the Department of Defense's 1995 sexual harassment survey to look at the role that leaders' commitment to stopping sexual harassment had on encouraging targets to report sexual harassment, satisfaction with the complaint process and on respondents' job satisfaction and organizational commitment. Leaders' commitment to stop-

ping harassment was critical to these outcome measures above and beyond the mere presence of official policies and procedures designed to reduce harassment. Moreover, the analyses suggested that policies and procedures were only minimally effective in improving the climate. Leaders needed to show their commitment to eradicating sexual harassment in order for women to feel confident enough to report their harassment experiences and for restoring their job satisfaction and commitment to the military.

Is embracing zero tolerance the best way—or even a good way—to foster a work environment where both sexes can and will thrive, or is it merely effective litigation bullet-proofing? Perhaps that should be the ultimate question addressed to those who have so enthusiastically promoted ZT.

NOTE

1. The *absolutist* class can be broken into two definitions—one addressing severe punishment for any credible/proven harassment, the other addressing the comprehensiveness of the behavior that is not tolerated. But, for purposes of this paper, we are labeling these as *absolutist* approaches characterized by strong and unwielding response to harassment.

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Received: 5/04/03

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Exhibit B

From: Lynch, Mike <MLynch@jewels.com>
Sent: Tue, 26 Oct 2010 18:01:48 GMT
To: Kochanek, Tryna <TKochane@jewels.com>
Subject: FW: WG Example sheets

fyi

From: Broadhead, Jamie
Sent: Tuesday, October 26, 2010 1:07 PM
To: Lynch, Mike
Subject: WG Example sheets

Mike,

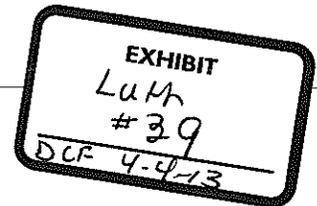
Here are the sheets I sent to Bill Luth yesterday regarding the examples of issues and the clarification of sales experience. I will bring copies to the meeting this afternoon.

Thank you,

Jamie

Jamie Broadhead
Human Resource Supervisor
Sterling Jewelers Inc.
330-665-6508
Fax: 330-664-4080

"If you can dream it, you can do it!" - Walt Disney



Does this count as Retail Sales Experience?

Yes

- Jewelry Sales
- Electronics Sales
 - Cell Phones
 - Direct TV
 - Computer
- Bank Teller
- Realtor
- Door to Door Sales
- Mall Store Sales
 - Victoria's Secret
 - Bath and Body Works
 - The Gap
- Independent Sales
 - Avon
 - Miche
 - Pampered Chef

No

- Sales Associate
 - Wal-Mart
 - Target
 - Big Lots
- Waitress
- Bartender
- Administrative Assistant
- Day Care Provider
- Delivery Driver
- Office Assistant/Clerical
- Fast Food Associate
 - McDonalds
 - Subway
 - Burger King
- Telemarketer
- Collections

Wage Generator Clarifications

1. **No Double Dipping for Experience** – The total years experience entered into the Wage Generator should match the total years experience accounted for on the application.

Ex. Tom has 20 years of experience: 5 as a Regional sales manager for a cell phone company and 15 as a Store Manager and sales associate for a local jewelry chain. During the interview it is discovered that for the local jewelry chain Tom worked 12 years as a Sales Associate and 3 years as a Store Manager. In the Wage Generator you would enter:

- 3 years for Store Manager Experience*
- 5 years in other management Experience*
- 12 years in Sales Experience*

Total= 20 years of Experience

2. **No Shopping for Wages** – The status selected in the Wage Generator should be the status you intend to hire the candidate at. You should not be running the candidate through at different status and then selecting the status off of the resulting wage.

Ex. Store 1 has 25-30 hours available for a new associate. They process Julie through the Wage Generator as a Full Time, Seasonal and Part time Associate. It is then decided to go with the Seasonal status because it is closer to the rate the candidate was looking for without going too far over.

3. **Count the Experience That Counts** – Make sure any experience that is entered into the Wage Generator translates into sales or management experience. When in doubt, ask!

Ex. Mark has 10 years of experience: 5 years at Subway, 3 years as a laborer for a landscaper, and 2 years as a Bank Teller. When processing through the Wage Generator, you would enter: 2 years sales experience. (Sandwich maker and laborer are not sales experience).

4. **Different Positions, Different Rates** – Especially with rehires, the rate they made before should not automatically be the rate they earn now. Differences in locations, status, and positions affect the rate.

*Ex. Mary was an Assistant Manager for Sterling for 3 years making \$12.00/hour before deciding to resign her position to return to school. Now, a year later Mary would like to return as a seasonal Sales Associate. The Wage Generator is returning a rate of \$8.00/hour. Mary should be hired in at the \$8.00 **NOT** \$12.00. Mary is no longer an Assistant Manager or a full time Associate.*

EXPERT REPORT OF DR. KATHLEEN K. LUNDQUIST

in

Laryssa Jock, et al. v. Sterling Jewelers Inc.
(AAA Case No. 11 160 00655 08)

Equal Employment Opportunity Commission v. Sterling Jewelers Inc.
(W.D.N.Y. Case No. 08-CV-0706 (A)(M))

June 21, 2013

APTMetrics, Inc.
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Darien, CT 06820
(203) 655-7779

EXPERT REPORT OF DR. KATHLEEN K. LUNDQUIST
in
Laryssa Jock, et al. v. Sterling Jewelers Inc.
Equal Employment Opportunity Commission v. Sterling Jewelers Inc.

I was retained by counsel for the arbitration claimants and the EEOC to provide expert analysis and opinions in the cases of *Jock, et al. v. Sterling Jewelers Inc.* (AAA Case No. 11 160 00655 08) and *Equal Employment Opportunity Commission v. Sterling Jewelers Inc.* (W.D.N.Y. Case 08-CV-0706 (A)(M)). This report analyzes the policies, procedures and decision-making processes relevant to compensation and promotion decisions at Sterling Jewelers in January 2003 through the present time frame. Specifically, I was asked to examine the job-relatedness of the policies and procedures Sterling uses to assess and promote job candidates, and evaluate employees for compensation purposes; and to determine if the manner in which those policies are implemented permits biases to affect employment decision-making at Sterling.

EXECUTIVE SUMMARY

At issue in this case are claims alleging gender discrimination in compensation and promotion decisions for retail store employees at Sterling Jewelers. While promotion and compensation decisions were made using a common process and using common tools (e.g., interviews, algorithms) across all Sterling brands, the processes credited job experiences and performance factors whose relationship to the target jobs are either not related to performing the job (e.g., management experience for a sales associate job) or were credited inconsistently.

No job analysis¹ or other formal study was ever performed to identify the knowledge, skills, abilities and experiences relevant to successful job performance at Sterling. Consequently, Sterling has not demonstrated the job relatedness of the factors it considered in setting starting salaries that resulted in pay discrepancies between men and women at the time of hire, which continued over the course of their employment. Nor has Sterling demonstrated the job-relatedness of the factors it considered in making promotion decisions, which resulted in women receiving proportionally fewer promotions.

In addition, Sterling's processes were executed in a manner that was unstructured and inconsistent, leading to unreliable and inconsistent evaluation of candidates. Managers were permitted to make decisions about compensation and promotion with insufficient guidance, ambiguous criteria, and without adequate oversight and monitoring to ensure the fairness of the decision making process. In essence, there was a centrally-mandated process that was poorly executed.

The practices and procedures used by Sterling are flawed in significant ways, creating potential barriers to the advancement and equitable compensation of female employees.

- No validity evidence was presented to demonstrate that Sterling used job-related factors to determine starting salaries for new sales associates at any time between 2003 and the present. In fact, the Wage Rate Generator tool implemented in 2009 to automate salary offers explicitly credits prior job experiences unrelated to successful performance in the sales jobs at Sterling.
- Hiring managers at Sterling have not been provided with sufficient guidance and training on how to implement company policy on setting starting pay for new employees in a reliable manner. Without such guidance, managers' decision-making

¹ Job analysis is a systematic process for collecting, analyzing and interpreting job-related information (Veres et al., 2001, p. 2).

processes were vulnerable to intentional and unintentional biases and subject to manipulation, thereby undermining the job-relatedness and accuracy of decisions.

- Job openings are not posted at Sterling. Instead, candidates are required to register their interest in promotion using the company's Career Advancement Registry (CAR). Supposedly registration is required before an employee can be considered for promotion; however, CAR fails to provide genuine access to promotional opportunities. Hiring managers are permitted to manipulate the system by allowing hand-picked candidates to register in CAR after being selected for promotion.
- Candidates interested in store management positions are required to complete specified training programs. District Managers select employees to participate in such programs. This practice may limit qualified female candidates' access to promotional opportunities since District Managers act as gatekeepers.
- No validity evidence was presented to demonstrate that the tools and procedures used by Sterling to evaluate candidates for promotion are based on job-related factors.
- Monitoring and oversight of both compensation and selection practices was lacking at Sterling, which resulted in a failure to identify and correct errors and inconsistencies in the implementation of policy. This lack of consistency undermines the job-relatedness and accuracy of compensation and promotion decisions.
- Sterling failed to evaluate starting salary and merit decisions for adverse impact against females. Without a formal evaluation of compensation decisions, the company was unable to identify and remediate gender differences in salary unrelated to job performance or other relevant factors.
- Sterling failed to evaluate promotion decisions for adverse impact against females. It is possible for a selection process to be neutral on its face, yet have a disparate impact against females or other protected groups. Without a formal evaluation of adverse impact, Sterling had no way of knowing if its processes were differentially impacting males and females and identifying less adverse alternatives.
- Sterling's Human Resources department is lacking in the knowledge and sophistication generally associated with professional HR departments and fails to engage in the activities typical of such departments. Specifically, HR fails to develop fair and equitable employee-related policy or to ensure that field management establishes and administers policy in accordance with legal guidelines.
- The failure of Sterling's HR department to establish fair and equitable employee-related policy extends to the company's anti-harassment program and its associated complaint and dispute resolution procedures. Sterling's procedures for handling

harassment and equal employment opportunity complaints are insufficient and fail to meet the Equal Employment Opportunity Commission's minimum standards for such programs

Given these barriers to the advancement and equitable compensation of females at Sterling, the finding of gender disparities in promotion and compensation by Plaintiffs' statistical expert, Dr. Louis Lanier, is unsurprising.

It is my professional opinion that the promotion and compensation decisions made for the retail jobs at Sterling lack sufficient reliability and validity to be considered job-related. Moreover, the lack of consistency and structure permitted measurement error to occur, including intentional or unintentional biases.

BACKGROUND & INVESTIGATION

Professional Experience

I am an Industrial/Organizational Psychologist currently employed as President and CEO of *APTMetrics, Inc.*, in Darien, Connecticut. My work experience over the past 30 years has been in the areas of Industrial Psychology and Psychometrics, focusing on such areas as the analysis of job content and job requirements, the validation of employee selection procedures and the design of related human resource processes. I have been a Fellow with the Psychological Corporation, a Summer Research Fellow with the Educational Testing Service (ETS), and a Research Associate with the National Academy of Sciences.

Throughout my professional career, I have extensively researched, designed, and conducted statistical analyses and provided consultation in the areas of job analysis, test validation, performance appraisal, and research design. I have performed consulting work in these areas for major corporations in the banking, financial services, technology, retail,

electronics, aerospace, pharmaceutical, telecommunications, and electric utility industries, as well as for federal, state, and local agencies and not-for-profit organizations.

I am licensed as a psychologist in the State of Connecticut. My qualifications are set forth in my curriculum vita, which is attached to this report as Attachment A.

I have consulted with both plaintiffs' and defendants' counsel in employment discrimination cases and have testified as an expert witness in numerous such cases. I have served as an expert on selection procedure validation for both the U.S. Department of Labor and the U.S. Department of Justice, and have served as a member of the expert panel on work analysis and assessment for the U.S. Department of Labor's National Skill Standards Board, chairing its Endorsement Review Panel. In 2007 I was invited to present testimony to the U.S. Equal Employment Opportunity Commission concerning the state of the art in selection procedure development.

I have also served or am currently serving as a court-appointed expert to help carry out the provisions of consent decrees in employment discrimination class actions involving Abercrombie & Fitch, Bank of America, Dell, the FBI, Ford, Kodak, Morgan Stanley, and Sodexo, and I previously served for five years as a court-appointed expert in The Coca-Cola Company class action employment discrimination settlement. My role in these settlements has included reviewing and modifying where necessary the company's human resources practices, including the Company's approach to selection, promotion, and compensation. A list of cases in which I have testified at trial or in deposition in the last four years is also contained in Attachment A.

I have been assisted in this work by Drs. Toni S. Locklear, Robert Lewis, Michael Lippstreu, Industrial Psychologists employed by *APTMetrics*, along with a number of other Industrial Psychologists involved in the coding of employment applications.

Investigation and Documents Reviewed

The data and documents I used to form my opinions in this case are listed in Attachment B. I reviewed information produced by the parties in this case relevant to the promotion and compensation decisions made by Sterling, including policy documents, training manuals, and selection materials. I also reviewed the declarations of current and former Sterling employees, and the depositions of Sterling executives and human resources (HR) personnel. In addition, my team reviewed and analyzed thousands of employment applications for the job of sales associate at Sterling Jewelers.

I also relied on the professional and scientific literature in forming my opinions. A substantial body of literature exists on topics relevant to the current litigation. The literature consulted in developing this report is listed in Attachment C.

THE ROLE OF THE INDUSTRIAL AND ORGANIZATIONAL PSYCHOLOGIST

The field of Industrial and Organizational (I/O) psychology involves the application of psychological theory and scientific research methods to the study of human behavior in the workplace. As the branch of psychology that focuses on the workplace, the area of I/O psychology is targeted to address, among other things, the skills and competencies required of workers, as well as how that information is used to hire, evaluate, manage and compensate employee job performance.

Industrial or I/O Psychologists use scientific methods to analyze jobs, identify related job requirements, and design and implement job-related measurement of individuals; for example, in designing selection and promotion procedures. As a result, I/O psychologists are frequently called upon to testify as to the validity of such processes according to professional standards and legal guidelines.

FRAMEWORK FOR EVALUATING STERLING'S PERSONNEL DECISIONS

Professionally-developed procedures for making personnel decisions serve a legitimate business purpose; specifically, they allow employers to base such decisions on solid, job-related information. At issue in this case are Sterling's personnel decisions in the areas of promotion and compensation, and the selection procedures used to make those decisions. The development, use and evaluation of a selection procedure are informed by both professional and legal standards, including:

- The *Principles for the Validation and Use of Employee Selection Procedures* (2003) authored by the Society for Industrial and Organizational Psychology ("SIOP Principles");
- The *Standards for Educational and Psychological Tests* (1999) published by the American Psychological Association et al. ("APA Standards"); and
- The federal *Uniform Guidelines on Employee Selection Procedures* ("Uniform Guidelines;" EEOC et al., 1978).

According to the Society for Industrial and Organizational Psychology's *Principles for the Validation and Use of Employee Selection Procedures* (2003):

Personnel decisions are employment-related decisions to hire, train, place, certify, compensate, promote, terminate, transfer, and/or take other actions that affect employment status. (p. 3, emphasis added)

Selection procedures refer to any procedure used singly or in combination to make a personnel decision... (p. 3, emphasis added)

According to the *Principles*, selection procedures include all manner of tests, interviews, individual assessments, appraisals of job performance, educational or training requirements, experience requirements, physical requirements, and estimates of advancement potential. Similarly, the federal *Uniform Guidelines* provide the following definition of a selection procedure:

Any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and unscored application forms. (Section 16Q, p. 38308)

While the *Uniform Guidelines* fail to mention compensation explicitly, its principles can be applied equally to compensation decisions and the criteria used to make those decisions.

Professional and legal standards recognize several key concepts, discussed below.

- **A selection procedure must be valid.** According to the *Uniform Guidelines*, selection procedures must be validated if they have adverse impact when used as a basis for any employment decision. Validation is an empirical process for establishing whether a selection procedure (such as a test, performance evaluation or estimate of advancement potential) provides meaningful information with regard to some important aspect of job performance. Job-related or “valid” promotion procedures are designed to predict potential employees’ job performance, whereas job-related or valid compensation criteria are designed to reward attributes and outcomes linked to successful job performance. Validation is the process whereby evidence is accumulated to insure that inferences about performance are accurate and job-related.

- **Job analysis is the foundation for developing job-related selection procedures.**

Underlying any process used for employment decision-making is the assumption that it is measuring the characteristics necessary for successful job performance. The role of job analysis is to identify important work behaviors and/or tasks that define a particular job, as well as the requirements for personnel performing the work behaviors and tasks — specifically, the knowledges, skills, abilities and other personal characteristics (KSAOs) needed for successful performance. This information then allows the developer to construct a selection procedure that has obvious and direct links both to the work performed on the job and to the underlying KSAOs.

- **A valid selection procedure must first be reliable.** For a selection procedure to be valid or job-related, it must first be reliable or relatively free from measurement error. Measurement error is produced by factors that influence candidates' scores or evaluations, but are unrelated to the attributes being measured by the selection procedure. Reliability refers to whether a selection procedure measures whatever it is measuring consistently. To ensure reliability, there must be standardization in the execution of the selection procedure (including, for example, what specific criteria are used and how those criteria are scored) to minimize the extent to which measurement error impacts the results. If the evidence shows that the selection procedure measures skills and experience needed to perform critical and important aspects of those jobs—and those characteristics are measured reliably—predictions about job performance based on the selection procedure are justified (Binning &

Barrett, 1989; Guion, 1991; Schmitt & Landy, 1993; *SIOB Principles*, 2003). Without reliability, interpretations about job performance are undermined since the selection procedure's results were contaminated by factors unrelated to the candidates' skills and abilities. Hence, a selection procedure must be BOTH reliable and valid to be job-related.

- **A reliable selection procedure must be proven to be job-related.** Professional and legal standards refer to three strategies for accumulating validity evidence to demonstrate job-relatedness:

- content validation which demonstrates the degree to which the content of the selection procedure matches the content of the job or job-required knowledge;
- criterion-related validation which measures the extent to which scores or results of the procedure are predictive of successful job performance; and
- construct validation which assesses the relationship between the psychological construct measured by the selection procedure and job performance.

All three approaches address the same unitary question about the test as a suitable measure of who will be able to perform the job effectively (Binning & Barrett, 1989; Goldstein, Zedeck & Schneider, 1993; Landy, 1986; Schmitt & Landy, 1993). It is the accumulation of evidence about the relationship between performance on the selection procedure and job performance which strengthens the researcher's ability to assert an unambiguous conclusion of validity. The *Uniform Guidelines* and professional standards specify the research and documentation standards which must be met to establish validity.

- **Validity must be demonstrated, not just asserted.** It is important to note that an organization's subjective judgment that a selection procedure measures important job attributes is insufficient to establish job-relatedness.

Any claim of validity made for a selection procedure should be documented **with appropriate research evidence** built on the principles discussed in this document. Promotional literature or testimonial statements should not be used as evidence of validity. (*SIOP Principles*, 2003, p.4, emphasis added).

Under no circumstances will the general reputation of a test or other selection procedures, its author or publisher, or casual reports of its validity be accepted in lieu of evidence of validity. Specifically ruled out are... nonempirical or anecdotal accounts of selection practices or selection outcomes (*Uniform Guidelines §60-3.9*, 1978).

Instead, validity must be demonstrated explicitly for the specific jobs in question.

As discussed above, both professional and legal standards recognize the concepts of validity, job analysis as the foundation for establishing job-relatedness, reliability, and demonstrated validity. Legal standards recognize one additional concept:

- **Consider less adverse alternatives.** Under the *Uniform Guidelines*, an employer is expected to consider alternatives with equivalent validity and select the alternative that will achieve its objectives with the least adverse impact. This includes a consideration of alternate procedures as well as alternate methods of using scores on the identified selection procedure. While the search for less adverse alternatives is less relevant to compensation criteria, professional guidelines emphasize equitable treatment in the implementation of selection procedures, and scrutiny for possible bias when subgroup differences are observed, (*SIOP Principles*, 2003) –

issues of importance when using a selection procedure to make any personnel decision.

As discussed below, HR executives at Sterling misunderstood the concepts of validity and job analysis which contributed to their failure to ensure the job relatedness of the company's employment procedures.

OVERVIEW OF STERLING JEWELERS AND THE TARGET JOBS

Today Sterling Jewelers employs over 18,000 team members and operates more than 1,500 jewelry stores under 12 retail brand names (<http://www.sterlingcareers.com/about.html>; <http://sterlingjewelers.com/>). Sterling brands are located in all 50 U.S. states and include the freestanding Jared The Galleria of Jewelry stores and mall stores such as Kay Jewelers, Weisfield Jewelers, Friedlander Jewelers, and Belden Jewelers. This case involves all Sterling retail brands and focuses on the store-based jobs with retail sales responsibilities listed below.

- 1) Store sales associates - Sales Mall and Sales Jared;
- 2) Assistant and department manager positions - Mall Assistant Manager, Jared Diamond Department Manager, Jared Timepiece Manager, and Jared Assistant General Manager; and
- 3) Store manager positions - Mall Store Manager and Jared General Manager.

The population of part-time and full-time employees in these jobs has varied over the relevant time frame of this litigation, ranging from 7,914 employees in 2003 to 10,722 employees in 2012 (Lanier Report, Table 1).

Mall Store Managers and Jared General Managers direct the daily operation of the individual Sterling stores in which they are located. District Managers (DMs) are responsible for

the overall operation of the 4 to 16 stores in their assigned district, including sales performance, profitability, staffing, and employee development. District Managers report to Vice Presidents of Regional Operations (VPROs) responsible for the oversight of multiple districts, who in turn report to Divisional Vice Presidents (DVPs).

MONITORING AND OVERSIGHT AT STERLING

While Sterling's HR policies and procedures may appear to be sufficient when taken at face value, implementation, monitoring, and oversight of the policies must be considered to render a definitive judgment as to their reliability and validity. Uneven administration and inappropriate or inconsistent use in decision-making can result in unanticipated and undesirable consequences including increased susceptibility to discrimination. To avoid such consequences, organizations typically empower their HR departments to monitor the execution of employee-oriented policies and procedures.

Typically user education and training, and a system of checks and balances, are used by organizations to ensure that HR policies and procedures are implemented correctly and consistently across the organization. Examples of checks and balances include reviewing interview documentation, monitoring compensation and selection decisions, requiring an approval process for exceptions to policy, and conducting adverse impact analyses. Without proper oversight and monitoring, variations in how compensation is administered are much more likely, as are variations in how promotion procedures are executed and final selection decisions are made. These variations result in poor reliability and therefore undermine the job-relatedness and accuracy of selection and compensation decisions.

At Sterling, little was done to ensure the consistent implementation of policies and procedures. Based on my review of deposition testimony, there seems to be a remarkable lack of proactivity on the part of Human Resources at the company. HR appears to have little involvement in, or influence on, field management. Testimony from Sterling's HR representatives indicates that a number of employee-related policies and procedures, commonly led by HR at other companies, are neither developed nor administered by HR at Sterling. For instance, HR has no involvement in formulating policies that govern the compensation of employees in the field (Berger Deposition, pp. 44-46). HR had little to no role in developing the content of the Wage Rate Generator algorithm used by Sterling since 2009 to set starting pay for new sales associates; instead HR merely facilitated development of a tool that met the field's specifications (Berger Deposition, p. 59). Similarly, Sterling has no documented HR policy relative to such a key area as succession planning (Luth Deposition, 11/13/12, p. 69). There also seems to be little HR influence on field decisions with employee relations implications. For example, it is striking that HR has no role in determining disciplinary actions for issues such as harassment beyond making recommendations to the field. Field management determines whether or not to implement HR's recommendations in such situations (Becker Deposition, p. 213; Lynch Deposition, p. 96; Mennett Deposition, p. 131).

This lack of influence is compounded by the apparent reluctance of Human Resources to engage in the typical activities carried out by most HR departments. According to a respected and frequently-cited Human Resources management textbook, the role of HR is to "ensure that line managers set policy in accordance with legal considerations; develop policies, procedure, and practices that support and are consistent with fair and ethical behavior by everyone in the

organization; and, help keep employer and employee rights and responsibilities in balance” (Schuler & Jackson, 1996, p. 79). Human Resources at Sterling appears not to have fulfilled these roles. Responsibilities that are commonly assumed by a Human Resources department – such as monitoring and ongoing analyses to ensure that pay, performance ratings, promotions, and succession readiness judgments are fair and gender-neutral – are not regularly performed at Sterling. In other words, HR did not conduct pay equity studies to determine whether or not compensation was administered in a way that led to pay discrepancies by gender or race, nor did they conduct disparate impact analyses to determine if promotion decisions were being made in a way which resulted in women or minorities receiving proportionally fewer promotions (Becker Deposition, pp. 165, 218; Luth Deposition, 11/12/2012, p. 223; Lynch, pp. 45-47). Deposition testimony indicates that any analysis of pay completed by HR was initiated in response to a particular issue or complaint (Lynch Deposition, pp. 46, 164-165, 196). The field organization, which regularly conducted analyses of employee wages to make sure they were competitive relative to the marketplace, appears not to have conducted any studies of whether or not there were gender disparities in compensation – despite some awareness that there may have been issues with females being underpaid relative to their male peers (Everton Deposition, pp. 63-66; Everton Exhibit 7; Luth Exhibit 13). According to William Luth, Vice President of Operations, Administration and Special Projects at Sterling, there have been no analyses comparing the salaries of male and female store associates (Luth Deposition, 11/12/12, p. 223). In our experience, professional HR departments routinely analyze employee salaries and annual increases and make the necessary adjustments to ensure pay equity; Sterling does not.

Sterling's Human Resources department also fails to conduct studies to establish the job-relatedness of its tools and procedures. For instance, Sterling's Senior Vice President of Human Resources, Steven Becker, was not aware of any HR involvement in identifying relevant performance factors or determining how those factors are weighted to produce an overall performance appraisal score (Becker Deposition, p. 164). Becker also indicated that, to his knowledge, Sterling had never validated the criteria used in promotion decisions (Becker Deposition, p. 19). While pre-employment tests purchased from vendors were validated by the vendors themselves, tools created by Sterling personnel (e.g., performance appraisal, succession criteria, the Wage Rate Generator) were not validated.

Sterling's HR department appears to lack the knowledge and sophistication generally associated with professional HR departments. At deposition, Becker – Sterling's top HR executive –conceded that he has no real familiarity with the *Uniform Guidelines on Employee Selection Procedures* designed to assist employers in complying with the requirements of federal law prohibiting discriminatory employment practices. However, Becker insisted that his recruiting team follows the *Guidelines* (Becker Deposition, pp. 15-16). Despite that assertion, both Maryellen Mennett, the Director of Field HR, and Tom Parks, a Regional HR Specialist at Sterling, said they were wholly unfamiliar with the *Uniform Guidelines* (Mennett Deposition, p. 30; Parks Deposition, p. 67), as did Michael Lynch, the VP of Employee Relations (Lynch Deposition, p. 44). HR executives at Sterling also failed to understand job analysis and its importance to establishing the job-relatedness and validity of employment procedures. In fact, Sterling confused job evaluation, the process of looking at the compensation of employees in a given job relative to Sterling's competitors in the marketplace (Becker Deposition, p. 28; Berger

Deposition, pp. 29-30; Menett Deposition, pp. 29-30) with job analysis, the process of establishing the duties and competencies required to perform a job. It is also interesting to note that Sterling had no leadership position with responsibility for diversity prior to Patrice Harris' promotion to VP in January of 2012 (Harris Deposition, p. 24), yet another factor that suggests Sterling's lack of sophistication in the Human Resources realm.

Deposition testimony also shows that documented policies are not implemented consistently or appropriately while undocumented policies may be treated as 'hard and fast' requirements, which, if violated, can warrant discipline. For instance, the company expects employees to adhere to "G-rated" work standards even though the standards are neither defined nor documented in any meaningful way (Becker Deposition, p. 180; Parks Exhibit 5 at SJI 000187722-7733).² Sterling's poor documentation of changes in policy also undoubtedly contributes to errors and inconsistencies in its implementation of policy. Testimony from Michael Lynch indicates that the Employee Relations Manual currently in use is not up-to-date and there is confusion regarding which aspects of it are now in force (Lynch Deposition, pp. 180-182).

Sterling HR's failure to consistently enforce its policies is further illustrated by the company's execution of its anti-harassment program and complaint procedures. Sterling policy indicates that field employees may report complaints to a supervisor, Human Resources or the company's third-party TIPS Hotline (SJI 00002859-2860; SJI 00004014-4017). Furthermore, any

² I understand that the various documents referenced in this report have also been produced in the productions in *EEOC v. Sterling Jewelers Inc.*, 08-CV-00706 (A)(M); for ease of reference and to avoid unnecessary duplication, I am citing to documents as they are identified in the arbitration or the EEOC litigation, but not both.

employee alleging an unlawful employment action such as harassment or discrimination must address his or her complaint using RESOLVE, the company's alternate dispute resolution program (SJI 00002284-2285).

Research in the professional literature has found that harassment in organizations is largely a function of organizational context, such as perceptions of the organization's policies, procedures and practices as well as workplace demographics, stereotypes and expectations (Bergman, et al., 2012; Fitzgerald, Hulin, & Drasgow, 1995). Context, along with the organization's response to reports of harassment, has a great influence on whether or not victims choose to report their harassment (Bergman et al., 2002, 2012). Organizations can increase the likelihood of victims reporting incidents, and decrease the occurrence of harassment in the workplace, by: 1) developing and disseminating organizational harassment policies (Bergman, et al., 2012; Chobot-Mason & Hepworth, 2005); 2) obtaining leadership support (Bergman, et al., 2012; Pryor, Giedd, & Williams, 1995;), and 3) communication, training, and education (Antecol & Cobb-Clark, 2008; Blakely, Blakely, & Moorman, 1998).

Consistent with the research literature in this area, the Equal Employment Opportunity Commission has promulgated standards for employer anti-harassment policies and complaint procedures (EEOC, 1999, 2005, 2006, 2010). According to the EEOC, at a minimum, such programs should contain the following elements (1999):

- A clear explanation of prohibited conduct;
- Assurance that employees who make claims of harassment or provide information related to such claims will be protected against retaliation;
- A clearly described complaint process that provides accessible avenues for complainants;

- Assurance that employer will protect the confidentiality of the individuals bringing harassment claims to the extent possible;
- A complaint process that provides a prompt, thorough, and impartial investigation; and
- Assurance that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred.

Testimony indicates these minimum standards are not met by Sterling's anti-harassment program and its associated complaint and dispute resolution procedures. First, the names of complainants are not confidential; they are sometimes revealed to the alleged perpetrator (Lynch Deposition, pp. 124-125) due, in part, to complainants being called in the store during work hours by a Regional Employee Relations Specialist investigating a complaint (Parks Deposition, pp. 141-142). Second, there is testimony that complaints registered by employees are not relayed to field executives in a consistent manner (Everton Deposition, p. 129). Third, immediate and appropriate corrective action is not assured since the actions that Employee Relations Specialists recommend based on investigations are forwarded to field management (Becker Deposition, pp. 81-82), which is free to ignore them (Mennett Deposition, p. 131; Parks Deposition, pp. 79-81). Finally, the independent mediator chosen to facilitate the resolution of complaints filed with the RESOLVE program, and the attorney provided as an objective resource to the RESOLVE panel, may have conflicts of interest due to other work they perform for Sterling for which they are compensated (Spagnola Deposition, pp. 173, 178; Spagnola Exhibit 33).

EVALUATION OF STERLING'S COMPENSATION DECISIONS

Starting Salaries

Sterling requires its hiring managers to review a job candidate's work history and prior job experience to determine an appropriate starting salary based on the manager's judgment as to the relevance of a candidate's experience to the job and the store's labor budget. It is longstanding company policy that new sales associates will receive the minimum pay rate unless the candidate has relevant prior job experience to justify paying more than the minimum. Sterling's District Managers have primary responsibility for making starting salary decisions for the associates employed by their stores. Prior to 2007, DMs were provided with informal training and direction on making such decisions; however, the process for establishing starting salaries was mostly unstructured (Liebler Deposition, pp. 37-39). Store managers and their DMs were expected to consider relevant job experience and comply with the payroll budget objectives established by their VPROs (Fernholz Deposition, pp. 122-123).

Wage floors were implemented in August 2007 to establish a minimum pay rate for the new hires in each store (SJI 00010651). Each individual store has a unique target pay rate for new sales associates, which was established on the basis of store location and sales volume (SJI 00010651). That target rate varies for full-time, part-time, and seasonal hires (Luth Deposition 11/12/2012, pp. 79-80). The goal of the wage floor system was to curb the growth of wages (Luth Deposition 11/12/12, p. 80), but consistent application of the policy was a challenge. District Managers had the authority to approve starting wages above the wage floor and the ability of store managers to exceed the wage floor varied based on the relationship they had with their District Managers (Luth Deposition 11/12/12, p. 87) as well as the perceived

experience of the job candidate (Luth Deposition 11/12/12, pp. 81). According to company documents, almost all sales associates were hired at rates over the wage floors (Berger Exhibit 4, SJI 00000441).

The Wage Rate Generator (WRG) was implemented in July of 2009 (SJI 00759056-9057) in an attempt to automate Sterling's existing process for setting starting salaries (Beck Deposition, p. 33; Berger Deposition, pp. 60-61; Liebler Deposition, p. 37) and ensure that Sterling did not "overpay for talent" (Luth Exhibit 6 at SJI00000478). The WRG is a software application programmed with an algorithm that computes a recommended starting salary for a new sales associate on the basis of his or her prior work experience and store location. The WRG enforces the use of wage floors and credits an applicant's retail sales experience, store manager experience and other management experience in setting starting pay rates for new sales associates. Company documents define sales experience as "the total number of years that the candidate has been actively selling in the retail business" (Berger Exhibit 4 at SJI 00000443) and further specify that sales associate experience is "experience where an individual is to conduct sales in a personal retail sales environment element" (Luth Exhibit 36 at SJI 00003441). Such documents go on to define store manager experience as "experience where complete autonomy is given to an individual for daily operation" and other management experience as "experience where an individual is required to operate one section of business for a particular store" (Luth Exhibit 36 at SJI 00003441). Company documents and training materials offer little beyond these brief definitions to clarify relevant experience for DMs using the WRG tool.

The Wage Rate Generator provides credit for each of the categories listed below in order of the weight given to the factor, i.e., retail sales experience was weighted more heavily than store management experience which was weighted more heavily than other management experience (SJI 00322134).

- Retail Sales Experience – up to 5 years of experience is credited
 - Retail Sales Experience – proven personal jewelry sales in dollars
 - Retail Sales Experience – proven personal non-jewelry sales in dollars
- Store Manager Experience – up to 5 years of experience is credited
 - Store Manager Experience – proven jewelry store performance in dollars
 - Store Manager Experience – proven non-jewelry store performance in dollars
- Other Management Experience – up to 5 years of experience is credited
 - Other Management Experience – proven jewelry store performance in dollars
 - Other Management Experience – proven non-jewelry store performance in dollars

As noted above, candidates receive additional credit if they provide documentation to verify the volume of products/services sold or managed in prior jobs. “Proven volume” in jewelry sales is weighted more heavily by the WRG than “proven volume” in non-jewelry sales. According to company policy, to be eligible for a higher pay rate, candidates had to document their experience with evidence of sales performance in dollars (Berger Exhibit 4 at SJI 00000445). Yet, in actual practice, WRG presentations indicate that proven sales volumes credited in the WRG actually did not have to be verified; District Managers were encouraged to use their “discretion” as “Executives of the Company” (Luth Exhibit 35 at SJI 01046416). Sales volumes can be “proven” by any reference District Managers “have personally viewed” (Beck

Exhibit 12 at SJI_EEOC_00129305). Thus, “proven” documentation of sales or management does not need to be “proven” at all; District Managers can use any source of information they wish to support a candidate’s prior sales.

The initial version of the WRG identified three possible wages (Recommended, Plus, and Maximum) for new hires by store. According to company policy, the Recommended rate was to be offered to applicants with no prior sales or management experience, whereas Plus and Maximum rates were to be offered to candidates with qualifications sufficient to justify a starting salary above the recommended market rate. A presentation to District Managers notes that Plus and Maximum rates were only for “superstars” and should be used rarely (Luth Exhibit 35 at SJI 01046412). Despite this guidance, Sterling found that District Managers’ use of the Plus and Maximum rates was frequent enough to increase the labor costs associated with hiring new sales associates (Beck Exhibit 12 at SJI_EEOC_00129308). In fact, the system did such a poor job of managing starting wages consistently that the Plus and Maximum wages were eliminated in January 2012 (Luth Deposition 11/12/12, p. 156-157; Berger Exhibit 5 at SJI 01256259).

It is clear that Sterling lacked adequate training and controls related to setting starting salaries in both the WRG and pre-WRG periods, compounded by the lack of HR or management oversight. Company documents provide evidence that the WRG was not implemented consistently (SJI 00194048) and management either failed to use the tool to set starting salaries or it was used incorrectly (Beck Exhibit 12 at SJI_EEOC_00129306-9309). The lack of actual verification of “proven” experience, as well as the option to offer Plus and Maximum rates, allowed District Managers to set starting wages inconsistently or according to their biases.

No job analysis or study of any kind was conducted to identify the type of prior job experience most likely to contribute to success in the sales associate job at Sterling. According to Robert Berger, the Director of Compensation, a small group of VPROs simply identified the types of experiences they wanted credited by the WRG, which he then programmed into the algorithm (Berger Deposition, p. 59). Their input was the sole method of generating the factors used to determine starting salaries in the WRG. No validation study was ever conducted to confirm their opinions (Berger Deposition, p. 139). The decision to credit management experience when setting starting salaries for sales associates was both arbitrary and not job-related, as was the group's decision to place a 5-year cap on the crediting of experience which is inconsistent with the research literature (see Anderson et al., 2012; Ericsson, 1996).

A 2010 attempt to clarify the types of prior experience that could be credited as retail sales in the WRG illustrates the haphazard nature of the process used to develop the tool and highlights its lack of reliability. Jamie Broadhead, an HR Supervisor who supported Sterling's new hire process, drafted a one-page guide entitled "Does this count as Retail Sales Experience" to assist District Managers in determining the types of job experience that should be classified as retail sales (Luth Exhibit 39). Ms. Broadhead's guide identified jewelry sales, electronic sales, bank tellers, realtors, door-to-door sales, mall store sales, and independent sales as types of retail sales experience that should be credited in the WRG and identified sales associate (e.g., at Walmart, Target, Big Lots), waitress, bartender, administrative assistant, day care provider, delivery driver, office assistant/clerical, fast food associate, telemarketer, and collections as types of experience that should not be credited as retail sales. Several top executives – Luth, Berger, Lynch and Kochanek – reviewed Ms. Broadhead's proposal and rejected it because the

jobs categorized as retail sales were in conflict with the executives' idiosyncratic personal experiences with employees in those jobs (Luth Deposition, 4/4/2013, pp. 54-63). For example, Mr. Luth testified that experience as a waitress or bartender in a high-end restaurant should qualify as retail sales based on his individual experiences dining at such establishments. Rather than acknowledge the DMs' need for more structure and rework Broadhead's categorization of jobs, Luth and his colleagues simply vetoed the guide. No systematic study of the types of job experience related to successful performance in the sales associate job at Sterling has ever been conducted.

While the research literature suggests that work experience and education are meaningful and important predictors of future performance for retail salespersons (Barbuto et al., 1995; Churchill, 1985; Dokko et al., 2009; Levy & Sharma, 1994; Quinones et al., 2004), research also finds that the *nature* of that experience is critical. Relevant experience for retail sales is typically defined as the "number of years of professional selling experience" (Johlke, 2006) and is thought to drive the accumulation of sales-relevant skills, such as "sales presentation", "adaptive selling", and "problem solving" (Gengler et al., 1995; Johlke, 2006; Mintu-Wimsatt & Gassenheimer, 2004), which together predict both objective and subjective sales performance outcomes.

In light of the research on the relationship between experience and sales, Sterling's rationale for crediting management experience when determining starting salaries for sales associates is inconsistent with the research and not apparently job-related for a non-management job. Neither the company job descriptions (SJI 00001617-1618, SJI 00001606-1607) nor the Department of Labor's O*NET description for the job of Retail Salesperson

suggests that management skills are directly relevant to a sales associate position. O*NET is the nation's primary source of occupational information with a database that contains hundreds of occupations. The O*NET database is continually updated by surveying a broad range of workers from each occupation (<http://www.onetcenter.org/overview.html>). The most important knowledges, skills and abilities for retail sales associates according to O*NET are provided in the exhibit below. No mention of management or leadership knowledge, skills or abilities is made by O*NET for retail sales jobs.

Exhibit 1
41-2031.00 - Retail Salespersons

Knowledges
Customer and Personal Service — Knowledge of principles and processes for providing customer and personal services. This includes customer needs assessment, meeting quality standards for services, and evaluation of customer satisfaction.
Sales and Marketing — Knowledge of principles and methods for showing, promoting, and selling products or services. This includes marketing strategy and tactics, product demonstration, sales techniques, and sales control systems.
English Language — Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
Mathematics — Knowledge of arithmetic, algebra, geometry, calculus, statistics, and their applications
Skills
Active Listening — Giving full attention to what other people are saying, taking time to understand the points being made, asking questions as appropriate, and not interrupting at inappropriate times.
Persuasion — Persuading others to change their minds or behavior.
Speaking — Talking to others to convey information effectively.
Service Orientation — Actively looking for ways to help people.
Negotiation — Bringing others together and trying to reconcile differences.
Social Perceptiveness — Being aware of others' reactions and understanding why they react as they do.
Reading Comprehension — Understanding written sentences and paragraphs in work related documents.
Coordination — Adjusting actions in relation to others' actions.
Critical Thinking — Using logic and reasoning to identify the strengths and weaknesses of alternative solutions, conclusions or approaches to problems.
Monitoring — Monitoring/Assessing performance of yourself, other individuals, or organizations to make improvements or take corrective action.
Time Management — Managing one's own time and the time of others.

Abilities
Oral Comprehension — The ability to listen to and understand information and ideas presented through spoken words and sentences.
Oral Expression — The ability to communicate information and ideas in speaking so others will understand.
Speech Clarity — The ability to speak clearly so others can understand you.
Speech Recognition — The ability to identify and understand the speech of another person.
Near Vision — The ability to see details at close range (within a few feet of the observer).
Problem Sensitivity — The ability to tell when something is wrong or is likely to go wrong. It does not involve solving the problem, only recognizing there is a problem.
Written Comprehension — The ability to read and understand information and ideas presented in writing.
Written Expression — The ability to communicate information and ideas in writing so others will understand.
Category Flexibility — The ability to generate or use different sets of rules for combining or grouping things in different ways.
Deductive Reasoning — The ability to apply general rules to specific problems to produce answers that make sense.
Source: http://www.onetonline.org/link/summary/41-2031.00

Sterling’s own promotion data also fails to support the job-relatedness of management experience for determining the starting salaries of new sales associates. While management skills can be of relevance when the majority of employees are promoted to management positions within a relatively short period after hire (1-2 years) that was not the case at Sterling.³ I reviewed time to promotion data for the years 2004 through 2008 to determine how quickly part-time and full-time sales associates progressed to store management positions. The average number of sales associates hired in each year was 5,124, ranging from 4,230 hires in 2004 to 5,727 hires in 2006. On average 73% of the sales associates hired in each year terminated or resigned within 24 months of their hire date without being promoted. Of the remaining associates, on average 14% were promoted within 12 months of their hire date and 30% were promoted within 24 months of their hire date. Given Sterling’s high turnover rate,

³ According to Section §1607.51 of the *Uniform Guidelines* (EEOC *et al.*, 1978), “If job progression structures are so established that employees will probably, within a reasonable period of time and in a majority of cases, progress to a higher level, it may be considered that the applicants are being evaluated for a job or jobs at the higher level.”

that 30% represents a very small percentage of those originally hired; on average only 8% of those hired were promoted within 24 months of their hire date. Thus, time to promotion data fails to support Sterling's use of management experience in the WRG.

It is also interesting to note the results of an internal analysis of wage overrides completed by Sterling's Compensation staff in 2012 (Berger Exhibit 5). This study, which used 2011 WRG data, evaluated the relative worth of 118 sales associates hired using wage overrides. At the time of the study, DMs and VPROs were using overrides to offer wages in excess of the maximum pay rate to applicants perceived as highly qualified. Field Operations was of the opinion that the WRG was not computing competitive wages and highly qualified candidates were unwilling to accept the wage rates recommended by the WRG (Berger Exhibit 5). As part of its study, the Sterling Compensation staff found that the wage override hires had more previous management experience than other sales associate hires (34% of the full-time wage override hires had prior management experience in contrast with only 14% of the remaining hires). The study also found that management experience did not translate into better job performance as a sales associate (specifically, 45% of full-time wage override hires and 47% of other full-time hires were found to meet standards in their 2012 performance reviews). While the performance sample was somewhat small, the results of this study suggest that more experience – in particular management experience -- did not justify higher wages.

Experience -- when properly evaluated and used -- can serve as a valid predictor of job performance. However, Sterling's approach is problematic due to its failure to establish the job-relatedness (e.g., crediting management experience) and validity of the criteria (e.g., setting an arbitrary cap on previous sales experience) used to set starting salary and to ensure the

reliability of such decisions. The lack of structure around setting starting salaries permits measurement error by allowing managers to set starting wages inconsistently or according to their biases.

Coding and Analysis of Applicant Experience

As part of the discovery process in this matter, Sterling provided the Plaintiffs with Wage Rate Generator data for the July 2009 through January 18, 2013 time frame. Sterling also provided employment applications for store sales associates hired in the 2003-2012 time frame; 1,926 hires from the 2003-2006 time frame⁴ and approximately 4,000 hires from the 2007-2012 time frame.⁵ Of the approximately 6,712 applications received, about 750 were deemed unusable.⁶

The applications provide a rich source of information about the prior job experience of individuals hired as sales associates at Sterling. My team analyzed and coded the job experience of applicants to investigate the reliability and validity of Sterling's starting pay decisions for new hires in the sales associate job. Specifically, we looked at gender differences in the types of job experience judged relevant to performance in the retail sales jobs at Sterling. The goal was to determine if gender differences in starting salary were a function of Sterling's failure to credit

⁴ Sterling selected a sample of 2,421 part-time and full-time employees hired between January 3, 2003 and December 31, 2006. The sample was stratified by gender and status to ensure equal numbers of men and women of part-time and full-time status were selected. The sample was subsequently narrowed to include only the first relevant hire for a sales associate during the relevant time period; i.e., the same employee could not be included more than once, which resulted in a final sample of 1,926 sales associates.

⁵ Sterling selected a random sample of approximately 4,000 part-time or full-time sales associates hired between January 1, 2007 and July 23, 2012. The sample was stratified by gender to ensure equal numbers of men and women were selected. The sample included only the first relevant hire for an employee during the relevant time period; i.e., the same employee could not be sampled more than once. "Newly hired" means the employee was either a first time hire or had not worked for Sterling in the last six months (182 days).

⁶ Applications were deemed unusable and excluded from coding for a variety of reasons: for example, the application was a duplicate, said only "see resume" and no resume was attached, was missing pages, was unreadable, was not an actual application, or was outside of the 2003-2012 time frame.

all relevant job experience and/or the crediting of non job-related experience such as management experience.

A coding sheet, included as Attachment D, was developed to capture applicants' prior job experience as listed on their applications in a form suitable for analysis. The checklist consisted of:

- A 4-item section designed to document any *Specialized Training and Certification* relevant to retail sales at Sterling
- A 6-item *Employment History – Part 1* section designed to capture experience credited by Sterling as part of the Wage Rate Generator
- A 13-item *Employment History - Part 2* section designed to capture sales and customer service experience of potential relevance to performance in the sales job at Sterling
- A single item documenting the number of non-sales jobs held in the jewelry industry requiring product knowledge

Coders reviewed assigned applications and made a rating of “Yes” or “No” on each item to indicate whether or not an applicant had prior experience in a particular category. The coder also indicated the years and months of experience in that category, summarizing across all jobs listed on the application. All applications were redacted prior to coding to ensure that coding judgments were gender blind. Specifically, applicants' first names and any other information that might reveal the gender of the applicant were removed. In addition, job titles such as waitress and waiter were changed to an equivalent gender-neutral job title such as server.

A four step process was followed to develop the scheme for coding job applications. First, Sterling's Wage Rate Generator was reviewed to identify the categories of prior experience credited by that tool for *Part 1* of the coding sheet. Second, two consultants identified the types of job experience deemed relevant to performance in the retail sales jobs

at Sterling for *Part 2* of the coding sheet. Relevance was determined based on Sales Mall and Sales Jared job descriptions, O*NET data on the retail sales occupation, and the research literature on the relationship between work experience and sales performance. Third, two *APTMetrics* consultants used the scheme to code a sample of Sterling applications and make adjustments to ensure the scheme worked as intended. During this step, the consultants identified examples of specialized training and certification for use in that section of the coding sheet. Finally, two additional consultants pilot tested the coding scheme by independently rating applications to ensure the scheme worked as intended. After applying the coding scheme to each application, the consultants met to discuss the utility of the coding scheme, resolve coding discrepancies, and reach agreement on the final categories of experience.

We identified 20 consultants with relevant experience in job analysis and employee selection to serve as coders for the analysis of applications. Eighteen coders have a Master's Degree or a Ph.D. in Industrial/Organizational Psychology, and two are within months of obtaining their Master's degree in Industrial/Organizational Psychology. The coders participated in a training session to teach them to systematically apply the checklist and coding rules to the analysis of applications. The initial training session consisted of classroom instruction, hands-on practice, and calibration. In addition, e-mail reminders were sent to coders throughout the time frame in which applications were being coded to reinforce coding rules and guidelines. One-on-one follow up training was also conducted on an as needed basis to ensure consistent use of the checklist.

Coder reliability was evaluated to assess consistency in use of the coding scheme across coders. An intraclass correlation (ICC) employing the one-way analysis of variance model for

average measurements was used to assess coder reliability. The ICC for the entire coding sheet was .97 with an ICC of .99 for Part 1 and .97 for Part 2. These findings indicate that raters shared a common understanding of the checklist and consistently applied the rules identified during training to the coding of the applications.

Review of Coding Study Findings

As a first step in our data analysis, we matched each coded application to the corresponding employment data for that applicant and to the relevant WRG record for applicants hired in July 2009 and beyond. A total of 600 coded applications were excluded from our sample because they could not be matched to a hiring record in the employment data. Another 302 applications were excluded from our sample because there was insufficient information on the application to code experience for one or more jobs. The final sample was comprised of 5,059 sales associate hired in the 2003-2012 time frame.

To investigate the relationship of experience to gender disparities in starting salary, we looked at gender differences in the types of job experience credited by Sterling as captured in Part 1 of the coding sheet. This analysis examined compliance with the company's WRG guidance and coded applicant experience as Sterling DMs are directed to code it. In the training session described above, our coders were provided with Sterling's own definitions of sales experience, store management experience and other management experience, as well as the company's instructions related to determining years of experience for purposes of the WRG.

Using the WRG, Sterling DMs enter applicants' years of experience for sales, store manager, and other management experience into the WRG application to determine

recommended starting pay rate. Where applicants are able to provide documentation of their personal sales or store sales volume, DMs enter these “proven volumes” as well. An applicant’s total years of sales experience – jewelry and non-jewelry – are combined for entry into the WRG; however, proven volumes are entered separately for jewelry and non-jewelry sales. Similarly an applicant’s total years of store management and other management experience – jewelry and non-jewelry – are combined for entry into the WRG, while proven volumes are entered separately for jewelry store sales and non-jewelry store sales. Since the application packets reviewed by our coders provided insufficient information to identify proven volumes, the Part 1 coding scheme instead required coders to capture years of experience separately for jewelry and non-jewelry rather than in combination as Sterling’s WRG dictates.

In addition to looking at job experience from Sterling’s perspective, we also looked at gender differences in the types of job experience we deemed relevant to retail sales at Sterling on the basis of company job descriptions, O*NET and the research literature. As such, a full range of both sales and non-sales customer service experience was captured in Part 2 of the coding sheet. In comparison to Part 1 of the coding sheet, Part 2 takes a more detailed look at sales experience by categorizing applicants’ years of experience into the different types of sales required by the jobs they held. Five categories of sales activities were coded ranging from transactional selling to active selling. Part 2 also looks at applicants’ years of non-sales customer service experience by categorizing applicants’ years of experience based on the different types of customer service duties performed in the non-sales jobs they held. Five categories of non-sales customer service were coded ranging from working with the public to primary customer service.

The ten categories of sales and non-sales customer service experience captured in Part 2 of the coding sheet were not deemed equally relevant to retail sales at Sterling; however, all types of sales and non-sales customer service experience were included to be comprehensive. In the absence of a formal job analysis study, it is impossible to determine the relative importance of sales and customer service experience and their precise relationship to the retail sales job at Sterling. However, on the basis of company job descriptions, O*NET and the research literature, we would expect that active sales experience is highly related to retail sales at Sterling, and that passive sales experience, experience providing secondary sales support and -- to a much lesser extent -- transactional selling will be of relevance. Furthermore, since retail sales has a strong customer service element and requires corresponding skills, we would expect that experience performing primary customer service duties in a non-sales environment will be highly related to retail sales at Sterling, and experience performing passive customer service duties in a non-sales jobs support -- to a much lesser extent -- merely working with the public will be of some relevance.

We used several analytical methods to examine the experience data for evidence of meaningful gender differences, both practical measures of significance (*i.e.*, Cohen's h effect size, Cohen's d effect size) and statistical tests of significance (Fischer's exact test, t-test). Practical methods were deemed particularly important in this situation due to the large applicant samples associated with each time frame we investigated. Since statistical significance tests are sensitive to sample sizes and the statistical power associated with large samples results in an increased likelihood of finding statistically significant differences even when observed differences are small, Cohen's effect size (h or d) was calculated to examine the

practical significance of observed differences. Cohen's h and Cohen's d statistics are free of the influence of total sample size which plagues statistical tests (Cohen, 1988).⁷

Table 1 shows a) the percentage of male and female applicants with experience in each Part 1 and Part 2 category for the entire 2003-2012 time frame, b) the mean years of experience held by male and female applicants in each category during the 2003-2012 time frame, and c) the results of several analytical methods used to examine the application data for evidence of statistically and practically significant gender differences in experience.

Table 2 shows the percentage of male and female applicants with experience in each Part 1 and Part 2 category in both the WRG and pre-WRG time frames. Table 3 also shows the mean years of experience held by male and female applicants in each category during both the WRG and pre-WRG time frames. Both tables include the results of several analytical methods we used to examine the application data for evidence of statistically and practically significant gender differences in years of experience.

Tables 1 through 3 illustrate gender differences in job experience that very likely contributed to gender disparities in starting salaries due to the job-relatedness of the specific job experiences credited and not credited by the Wage Rate Generator. Sterling's tool both credited non job-related experience (*i.e.*, management) and failed to credit other job-related experience (*i.e.*, non-sales customer service). The most notable findings in Tables 1 -3 are:

⁷ With Cohen's effect size statistics, larger effect sizes indicate a stronger relationship (between experience and gender in this situation). Cohen (1988, 1992) suggests operational definitions for interpreting effect sizes, with an h of .20 indicating a small effect size, an h of .50 indicating a medium effect size, and an h of .80 representing a large effect size.

- There are significant gender differences in applicants' store management experience. Female applicants were significantly less likely to have experience as store managers and had significantly fewer years of experience in store management than their male counterparts. Given Sterling's strong consideration of management experience when setting starting salaries, this difference undoubtedly had a negative impact on female employees' initial pay rates.
- Females' jewelry-specific sales experience is comparable to males in the Pre-WRG and overall time frames and significantly greater than males in the WRG time frame. While it seems reasonable to assume that jewelry-specific sales experience would be more strongly related to retail sales at Sterling than non-jewelry experience, the company failed to distinguish jewelry and non-jewelry sales in its WRG algorithm, unless the applicant was able to document proven sales volume – a factor that likely disadvantaged females.⁸
- While Males have significantly more experience in Active Selling in all time frames, Females have significantly more experience in Direct Customer Service than males in all time frames, a job-related factor that wasn't credited by the WRG.

Merit Decisions

At Sterling, merit increases for all field positions are determined largely by the performance appraisal process (Beck Exhibit 13; SJI 00000395-402; SJI 00000387-394). For store personnel, appraisal ratings are rooted in performance on individual sales goals and non-

⁸ An applicant could get a "bump" to her recommended wage rate by providing "proof" of jewelry sales, but in the absence of proof jewelry-specific sales experience was not credited any more than non-jewelry sales.

sales behaviors, with sales performance driving approximately 70% of the overall appraisal rating (Luth Exhibit 17; SJI 00000084-0094). Merit increases are dictated by the employee's annual performance rating with a range of acceptable percentage increases prescribed for each performance level (Luth Deposition, 11/12/12, pp. 235-236; Luth Exhibit 14). For example, an employee with an excellent performance rating is eligible to receive a 4-6% merit increase. Merit recommendations are subject to DM approval, but no guidelines exist to dictate that an employee's position in the salary range also influence the merit increase given. A common organizational practice to maintain pay equity is to grant a high-performing employee with a relatively low salary a larger merit increase than a high-performing employee with a relatively high salary (Lawler, 1990).

Sterling's approach is problematic because gender differences in starting salary tend to be perpetuated, and exacerbated, over time when increases are based exclusively on a percentage of base pay. Therefore, two employees earning an equal merit increase (e.g., 4%) will receive different dollar increases if their base pay differs. Assume two employees are hired into the Sales Associate position, one starts at an annualized base pay of \$30,000, while the other starts at \$35,000. Given that both receive a 4% merit increase, the difference in their annualized base pay increases from \$5,000 to \$5,200 after the first year. After three years, this difference has risen to \$5,625, and after five years, the difference is over \$6,000 despite receiving equal performance ratings in the same job. This effect is compounded year after year making the differences between the two employees in base pay greater over time. Researchers note that gender differences in starting salary are the biggest reason for gender-based pay inequity (Kaman & Hartel, 1994).

Without clear unambiguous criteria, a pay differential at the time of hire can occur due to non job-related factors such as a consideration of non job-related experience or a biased evaluation of previous experience. Prior to implementation of the WRG in January 2009, Sterling's policy for setting starting salary was generally understood by hiring managers, but not well-documented (Liebler Deposition, p. 38). Even with the WRG in place to document and automate the company's policy, Sterling continued to make starting salary decisions based on factors that weren't job-related.

EVALUATION OF STERLING'S PROMOTION DECISIONS

Sterling has a policy of promoting from within to the extent possible (Luth Deposition, 11/12/12, p. 126; SJI 00002164). Store employees interested in promotion to store-based management and district manager positions must register in Sterling's Career Advancement Registry and meet eligibility requirements for the job of interest. Sterling introduced the Career Advancement Registry (CAR) in April of 2007 to permit associates to indicate their interest in promotion opportunities. Since promotional opportunities aren't posted at Sterling, prior to CAR associates interested in promotion would have to raise the issue with their manager (Luth Deposition, 11/13/12, p. 65). This approach to identifying candidates led to the perception among employees that promotions into the store manager and DM ranks at Sterling were a function of being "tapped on the shoulder" by management (Beck Exhibit 14). A system like CAR was discussed as one option to address that concern (Beck Exhibit 14). According to company policy, only candidates who register their interest in promotional opportunities via CAR will be considered for management job openings (SJI 00008763).

At Sterling, District Managers are responsible for identifying, developing and tracking high-potential management candidates, which includes providing VPROs with store manager succession planning worksheets on a regular basis (Everton Deposition, p. 75). As part of the succession planning process, DMs are expected to create development plans for high-potential team members, identify development resources and opportunities, review team members' progress toward achieving goals, and provide feedback on a quarterly basis (Luth Exhibit 8). DMs are also expected to select employees to participate in the training programs which are required to become an assistant manager, department manager, or store manager. Hence, DMs control access to promotional opportunities by controlling access to training opportunities.

When a store management opening occurs, employee performance is reviewed and top candidates are interviewed by the DM who makes a hiring recommendation to the VPRO (Everton Deposition, pp. 78-80). To be considered a top candidate for any store management position, an employee must score well on his or her performance appraisal. A total of approximately 70% of an employee's performance appraisal score is based on his or her sales revenue (SJI 00009759-9761; SJI 00010477-0479). The most heavily weighted component in deciding if a candidate is highly promotable is his or her sales performance (Luth Deposition, 4/4/2013, pp. 110-111) as reflected in annual performance appraisal ratings.

VPROs are responsible for identifying high-potential store managers suitable for development and eventual promotion to DM positions (Everton Deposition, p. 72). VPROs meet annually to discuss candidates registered in the CAR and rank them based on their performance (Liebler Deposition, p. 118-120). Performance factors considered include store performance,

leadership, and history of promoting store employees. Only highly ranked candidates are selected for the District Manager Training program (Everton Deposition, pp. 73-74). When DM openings occur, VPROs and DVPs interview candidates and make a final selection decision taking into consideration candidates' scores on a personality assessment designed to evaluate work styles (SJI 00056261-6303).

Validity and Reliability of the Promotion Process

As discussed above, both sales goal achievement and other performance appraisal ratings factor into managers' judgments of succession potential and promotion (Luth Deposition, 11/13/12, pp. 105, 107). According to VP Luth, sales performance is the most important factor in determining if an employee is promotable (Luth Deposition 4/4/13, pp. 110-111). While performance appraisals are identified by Sterling as the primary method for assessing sales performance and determining succession candidates (SJI 00028900), training materials suggest that "mission statement and leadership behaviors" also be considered (Luth Exhibit 8 at SJI 00028909). While sales performance is primary, according to Luth, management performance, the completion of management skills training and prior work experience is also of importance in making promotion decisions (Luth Deposition 4/4/13, pp. 110-111).

Underlying any promotion process used for employment decision making is the assumption that it is focusing on the characteristics necessary for successful job performance. While Sterling's promotion procedures may seem reasonable on their face, to the extent that they have adverse impact, the characteristics evaluated would have to be shown to be job-related. In this case, the suitability of the characteristics assessed was never confirmed using a professionally-acceptable job analysis and validation process. Despite their impact on

succession planning and promotion, the rating factors included in Sterling's performance management system have never been validated (Becker Deposition; p. 165; Luth Deposition, 11/12/12, p. 279). In particular, the supposed heavier emphasis placed on sales performance in comparison with other attributes makes the job-relatedness of the promotion criteria questionable when applied to the work performed in the managerial job. While sales performance is undoubtedly critical to a retail sales manager job, management skills such as people management, organizing, problem solving, and decision making are likely to be equally or more important to successful performance. However, there are only vague references to factors other than meeting "performance standards" in the case documents and depositions I reviewed.

Lack of Consistency in Promotion Decisions

While Luth stresses the importance of sale performance (Luth Deposition 4/4/13, pp. 110-111), its actual relationship to promotion decisions is unclear. The exact nature of the process for evaluating factors other than those rated as part of Sterling's performance management process is unknown. There appears to be no documentation or guidance in regard to making a final selection decision; hence, the decision-making process at Sterling is highly subjective. No guidance is provided to decision makers to structure their final evaluation of candidates; in other words, no criteria are provided on how to evaluate candidate information in a job-related fashion, nor were decision makers instructed on what weight to give the various sources of information (e.g., performance appraisal, interviews, assessment results) provided about the candidates. Furthermore, monitoring of decision making for consistency and fairness is virtually non-existent. For these reasons, the decision making process is unreliable and

therefore vulnerable to non job related errors, including both intentional and unintentional biases and manipulation.

Moreover, jobs aren't posted at Sterling and the company's Career Advancement Registry does little to provide genuine access to promotional opportunities. A well-executed registration of interest (ROI) process can create opportunities for females and other diverse candidates interested in promotion by giving all employees an opportunity to express interest. In a well-executed ROI, the opportunity to register is communicated to all employees -- no specific group or job is targeted -- and the registration site is posted in a location (such as the company intranet) that is easily accessible to employees. In a well-executed ROI, management also actively considers the employees who register as candidates for job openings. For example, in some companies employees expressing an interest in a given position may be invited to apply when a job opening occurs. In others, management may use the registry to identify a diverse group of high-potential employees and provide them with developmental opportunities. Unfortunately, at Sterling, inconsistency surrounding the use of CAR has prevented the registry from serving its intended function and may have discouraged employees from signing up.

Registration in CAR as a prerequisite for promotion is a pretense. Sterling allows its VPROs and DMs to ignore implementation policies and select employees targeted for promotion who are required to register in CAR only after being contacted by management (Ballous Declaration at CL-STR008572-8573; Lynch Exhibit 13; Newton Declaration at CL-STR009866). In some cases, explicit direction was issued to adjust effective dates for a job posting in order to give associates selected for promotion the time to register in CAR (Fernholz Exhibit 3 at SJL 00189690-9691). While CAR was supposedly implemented to provide a vehicle

for *all* employees to indicate interest in promotional opportunities, it is used in a way that merely reinforces the company's "tap of the shoulder" system.

District Manager succession and promotion decisions also fail to follow other company policies. There are repeated instances of lack of consistency in selection and promotion practices, process breakdowns, and "poor execution with regards to the selection process" that allow for potential bias and unfair treatment, such as advancing less qualified candidates over those more qualified for promotion (Everton, Exhibit 14; Everton, Exhibit 15; Fernholz, Exhibit 10; Menett Exhibit 23).

CONCLUSION

It is my professional opinion that the promotion and compensation decisions made for the retail sales and management jobs at Sterling lack sufficient reliability and validity to be considered job-related. Moreover, the lack of consistency and structure permitted measurement error to occur, including intentional or unintentional biases. Additionally, barriers to the advancement and equitable compensation of female employees increased the likelihood of gender discrimination in promotion and compensation at Sterling.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 21st day of June 2013 in Darien, CT.

A handwritten signature in cursive script that reads "Kathleen K. Lundquist". The signature is written in black ink and is centered on the page.

Kathleen K. Lundquist, Ph.D.

Rate of Compensation

My firm is being compensated the studies involved in forming my opinions, my review and analysis of evidence and depositions, and my testimony at a rate of \$550 per hour. *APTMetrics* is being compensated for the time of additional members of the staff at their normal billing rates, ranging from \$50 to \$350 per hour. Out of pocket expenses incurred in connection with *APTMetrics* assistance in this case are also being reimbursed.

TABLES

Table 1. Gender Differences in Applicant Experience, 2003-2012

Category	Categorical Data						Years of Experience							
	Male		Female		Fisher's Exact	h	Male			Female			t-test sig.	d
	Total	% Males with Experience	Total	% Females with Experience			N	Mean	SD	N	Mean	SD		
Part 1 - Experience														
Sales - Jewelry	2490	21.12%	2569	25.03%	0.00	-0.09	2452	0.64	2.35	2522	0.69	2.10	0.36	-0.03
Sales - Non-jewelry	2490	31.69%	2569	27.44%	0.00	0.09	2436	0.77	2.05	2523	0.64	1.96	0.03	0.06
Sales - Combined	2490	47.47%	2569	46.79%	0.63	0.01	2401	1.41	3.09	2477	1.34	2.83	0.38	0.03
Sales - Combined/Capped							2401	1.03	1.61	2477	1.02	1.62	0.86	0.01
Store Manager - Jewelry	2490	7.83%	2569	4.09%	0.00	0.16	2479	0.59	3.00	2563	0.22	1.54	0.00	0.16
Store Manager - Non-Jewelry	2490	13.61%	2569	9.93%	0.00	0.11	2470	0.69	2.78	2550	0.50	2.25	0.01	0.07
Store Manager - Combined	2490	20.20%	2569	13.08%	0.00	0.19	2460	1.28	4.11	2544	0.72	2.87	0.00	0.16
Store Manager - Combined/Capped							2460	0.65	1.53	2544	0.41	1.25	0.00	0.17
Other Management - Jewelry	2490	7.99%	2569	6.66%	0.08	0.05	2474	0.37	1.91	2556	0.25	1.46	0.01	0.07
Other Management - Non-Jewelry	2490	26.55%	2569	22.50%	0.00	0.09	2435	0.99	3.01	2536	0.75	2.17	0.00	0.09
Other Management - Combined	2490	32.57%	2569	27.64%	0.00	0.11	2420	1.36	3.52	2524	1.01	2.70	0.00	0.11
Other Management - Combined/Capped	NA	NA	NA	NA	NA	NA	2420	0.89	1.65	2524	0.71	1.49	0.00	0.11
Part 2 - Sales														
Transactional	2490	13.65%	2569	23.55%	0.00	-0.26	2464	0.23	0.95	2547	0.44	1.28	0.00	-0.18
Passive	2490	31.41%	2569	35.62%	0.00	-0.09	2438	0.68	1.96	2516	0.78	2.01	0.07	-0.05
Sales Support	2490	18.19%	2569	10.86%	0.00	0.21	2451	1.06	3.52	2554	0.54	2.36	0.00	0.17
Active Selling - Indirect	2490	4.10%	2569	3.39%	0.21	0.04	2481	0.10	0.86	2560	0.08	0.75	0.42	0.02
Active Selling - Direct	2490	40.24%	2569	34.49%	0.00	0.12	2419	1.53	3.83	2509	1.15	2.91	0.00	0.11
Active Selling - Combined	2490	42.69%	2569	36.90%	0.00	0.12	2412	1.64	3.93	2501	1.23	3.03	0.00	0.12
Part 2 - Non-Sales Customer Service														
Working with the Public	2490	15.66%	2569	20.28%	0.00	-0.12	2469	0.46	2.15	2543	0.60	2.33	0.04	-0.06
Secondary Customer Service	2490	27.15%	2569	29.82%	0.04	-0.06	2453	0.99	3.00	2526	1.14	3.04	0.08	-0.05
Primary Customer Service - Indirect	2490	4.10%	2569	5.61%	0.01	-0.07	2488	0.10	1.01	2567	0.12	0.82	0.33	-0.03
Primary Customer Service - Direct	2490	19.92%	2569	32.54%	0.00	-0.29	2452	0.38	1.30	2526	0.76	1.84	0.00	-0.24
Primary Customer Service - Combined	2490	23.17%	2569	36.78%	0.00	-0.30	2451	0.48	1.66	2524	0.88	2.01	0.00	-0.22

Note: Significant differences indicated by Fisher's Exact < .05 or t-test sig < .05.

Note: h = effect size for difference in proportions and d = effect size for difference in means; small effect = .20; medium effect = .50; large effect = .80.

Table 2. Gender Differences in Applicants' Experience, Pre-WRG and WRG Time Periods

Category	Pre-Wage Rate Generator Period						Wage Rate Generator Period					
	Male			Female			Male			Female		
	Total	% Males with Experience	Total	% Females with Experience	Fisher's Exact	h	Total	% Males with Experience	Total	% Females with Experience	Fisher's Exact	h
Part 1 - Experience												
Sales - Jewelry	1619	21.37%	1630	23.74%	0.11	-0.06	871	20.67%	939	27.26%	0.00	-0.15
Sales - Non-Jewelry	1619	31.69%	1630	26.13%	0.00	0.12	871	31.69%	939	29.71%	0.39	0.04
Sales - Combined	1619	48.30%	1630	44.29%	0.02	0.08	871	45.92%	939	51.12%	0.03	-0.10
Store Manager - Jewelry	1619	7.47%	1630	3.56%	0.00	0.17	871	8.50%	939	5.01%	0.00	0.14
Store Manager - Non-Jewelry	1619	12.85%	1630	9.75%	0.01	0.10	871	15.04%	939	10.22%	0.00	0.15
Store Manager - Combined	1619	19.21%	1630	12.70%	0.00	0.18	871	22.04%	939	13.74%	0.00	0.22
Other Management - Jewelry	1619	7.84%	1630	6.01%	0.05	0.07	871	8.27%	939	7.77%	0.73	0.02
Other Management - Non-Jewelry	1619	26.93%	1630	22.58%	0.00	0.10	871	25.83%	939	22.36%	0.09	0.08
Other Management - Combined	1619	32.80%	1630	27.18%	0.00	0.12	871	32.15%	939	28.43%	0.09	0.08
Part 2 - Sales												
Transactional	1619	13.09%	1630	23.74%	0.00	-0.28	871	14.70%	939	23.22%	0.00	-0.22
Passive	1619	32.12%	1630	36.63%	0.01	-0.09	871	30.08%	939	33.87%	0.09	-0.08
Sales Support	1619	16.99%	1630	10.37%	0.00	0.19	871	20.44%	939	11.71%	0.00	0.24
Active Selling - Indirect	1619	3.95%	1630	3.25%	0.30	0.04	871	4.36%	939	3.62%	0.47	0.04
Active Selling - Direct	1619	40.09%	1630	32.39%	0.00	0.16	871	40.53%	939	38.13%	0.31	0.05
Active Selling - Combined	1619	42.31%	1630	34.72%	0.00	0.16	871	43.40%	939	40.68%	0.25	0.06
Part 2 - Non-Sales Customer Service												
Working with the Public	1619	15.44%	1630	20.31%	0.00	-0.13	871	16.07%	939	20.23%	0.02	-0.11
Secondary Customer Service	1619	28.17%	1630	31.04%	0.08	-0.06	871	25.26%	939	27.69%	0.26	-0.06
Primary Customer Service - Indirect	1619	3.95%	1630	5.28%	0.08	-0.06	871	4.36%	939	6.18%	0.09	-0.08
Primary Customer Service - Direct	1619	20.51%	1630	32.45%	0.00	-0.27	871	18.83%	939	32.69%	0.00	-0.32
Primary Customer Service - Combined	1619	23.53%	1630	36.32%	0.00	-0.28	871	22.50%	939	37.59%	0.00	-0.33

Note: Significant differences indicated by Fisher's Exact < .05.

Note: h = effect size for difference in proportions; small effect = .20; medium effect = .50; large effect = .80.

Table 3. Gender Differences in Applicants' Years of Experience, Pre-WRG and WRG Time Periods

Category	Pre Wage Rate Generator Time Frame								Wage Rate Generator Time Frame							
	Male			Female			t-test sig.	d	Male			Female			t-test sig.	d
	N	Mean	SD	N	Mean	SD			N	Mean	SD	N	Mean	SD		
Part 1																
Sales - Jewelry	1594	0.61	2.34	1601	0.63	1.93	0.81	-0.01	858	0.68	2.36	921	0.81	2.37	0.27	-0.05
Sales - Non-Jewelry	1587	0.74	2.02	1604	0.62	1.90	0.07	0.06	849	0.81	2.13	919	0.68	2.05	0.19	0.06
Sales - Combined	1563	1.37	3.04	1576	1.26	2.72	0.28	0.04	838	1.49	3.18	901	1.48	3.02	0.92	0.00
Sales - Combined/Capped	1563	1.00	1.57	1576	0.97	1.59	0.57	0.02	838	1.08	1.68	901	1.11	1.66	0.71	-0.02
Store Manager - Jewelry	1614	0.51	2.65	1626	0.17	1.26	0.00	0.16	865	0.72	3.55	937	0.29	1.94	0.00	0.15
Store Manager - Non-Jewelry	1606	0.67	2.82	1614	0.45	2.07	0.01	0.09	864	0.74	2.72	936	0.60	2.54	0.28	0.05
Store Manager - Combined	1601	1.18	3.90	1610	0.61	2.45	0.00	0.17	859	1.47	4.48	934	0.90	3.47	0.00	0.14
Store Manager - Combined/Capped	1601	0.60	1.48	1610	0.37	1.19	0.00	0.17	859	0.74	1.61	934	0.47	1.35	0.00	0.18
Other Management - Jewelry	1609	0.32	1.70	1624	0.20	1.16	0.02	0.09	865	0.45	2.26	932	0.34	1.87	0.26	0.05
Other Management - Non-Jewelry	1581	1.01	3.20	1606	0.72	2.09	0.00	0.11	854	0.95	2.62	930	0.81	2.31	0.23	0.06
Other Management - Combined	1571	1.33	3.58	1601	0.92	2.43	0.00	0.14	849	1.42	3.39	923	1.16	3.12	0.10	0.08
Other Management - Combined/Capped	1571	0.87	1.63	1601	0.67	1.44	0.00	0.13	849	0.92	1.68	923	0.79	1.58	0.10	0.08
Part 2 - Sales																
Transactional	1601	0.22	0.91	1615	0.44	1.34	0.00	-0.19	863	0.26	1.00	932	0.44	1.17	0.00	-0.17
Passive	1584	0.67	2.02	1593	0.73	1.85	0.38	-0.03	854	0.69	1.85	923	0.86	2.25	0.07	-0.08
Sales Support	1595	0.93	3.19	1619	0.46	2.01	0.00	0.17	856	1.32	4.07	935	0.69	2.86	0.00	0.18
Active Selling - Indirect	1615	0.09	0.86	1625	0.08	0.68	0.56	0.02	866	0.12	0.87	935	0.10	0.85	0.56	0.03
Active Selling - Direct	1572	1.45	3.75	1590	1.03	2.69	0.00	0.13	847	1.67	3.98	919	1.36	3.24	0.07	0.09
Active Selling - Combined	1569	1.55	3.84	1586	1.10	2.79	0.00	0.13	843	1.81	4.09	915	1.46	3.39	0.06	0.09
Part 2 - Non-Sales Customer Service																
Working with the Public	1603	0.46	2.09	1611	0.59	2.36	0.08	-0.06	866	0.47	2.27	932	0.60	2.28	0.23	-0.06
Secondary Customer Service	1593	1.02	3.10	1598	1.11	2.96	0.41	-0.03	860	0.93	2.80	928	1.18	3.17	0.07	-0.09
Primary Customer Service - Indirect	1618	0.12	1.22	1628	0.11	0.79	0.91	0.00	870	0.06	0.39	939	0.14	0.87	0.01	-0.12
Primary Customer Service - Direct	1595	0.36	1.26	1600	0.71	1.74	0.00	-0.23	857	0.41	1.37	926	0.85	2.02	0.00	-0.25
Primary Customer Service - Combined	1594	0.48	1.78	1598	0.82	1.92	0.00	-0.19	857	0.47	1.41	926	0.99	2.16	0.00	-0.28

Note: Significant differences indicated by t-test sig < .05.

Note: d = effect size for difference in means; small effect = .20; medium effect = .50; large effect = .80.

ATTACHMENT A

KATHLEEN KAPPY LUNDQUIST

APTMetrics, Inc.
One Thorndal Circle
Darien, CT 06820
Business: (203) 655-7779

EDUCATION

Ph.D.	Psychometrics	Fordham University	1979
M.A.	Psychometrics	Fordham University	1976
B.A. summa cum laude	Psychology	College of Mt. St. Vincent	1974

PROFESSIONAL EXPERIENCE

- 1995 to Present **APTMETRICS, INC.**
- President and CEO.* Founded and manages the firm, which provides consulting services in the design and validation of employee selection procedures, performance management, downsizing and executive assessment for Fortune 100 clients in the aerospace, banking, pharmaceutical, telecommunications, consulting and utility industries. Project experience also includes a variety of public sector employers. Conducts litigation support activities, including serving as an expert witness for both plaintiffs and defendants.
- 1990 to 1995 **HRSTRATEGIES**
- 1991 to 1995 *Vice President.* Responsible for managing the New York Regional Office of HRStrategies, providing consulting services in skills assessment, survey design, test development, and validation projects for clients primarily in Fortune 100 companies.
- 1990 to 1991 *Managing Principal.* Opened the New York Regional Office of HRStrategies.

- 1989 to 1990 **HEWITT ASSOCIATES**
- Consultant.* Provided assistance to clients in the design and implementation of performance management and other human resource programs. Special expertise in the areas of construction and validation of selection systems and management of large scale research projects.
- 1979 to 1989 **SOUTHERN CALIFORNIA EDISON**
- 1987 to 1989 *Manager, Human Resources Measurement and Development.* Responsible for managing, promoting, and administering research and development programs related to selection, training, and organizational development. Areas of responsibility included (1) internal management consulting, (2) development and validation of selection procedures, (3) design and administration of corporate training programs, and (4) employee development programs such as career counseling, performance management, and educational assistance. Directed a professional staff of forty and administered a budget of \$3.5 million. Interfaced with all levels of management, legal counsel, and federal and state EEO compliance agencies.
- Special project assignment 1988.* Managed a corporate task force to implement a flexible benefits package; reported directly to the Corporate Treasurer.
- As the chief *Industrial Psychologist* for the corporation, responsibilities also included (1) managing the behavioral reliability and psychological assessment programs, (2) testifying at grievances, arbitrations, and trials, and (3) serving in an oversight capacity for Employee Assistance Program and certification of mental health provider network.
- 1985 to 1986 *Manager, Human Resources Measurement.* Responsible for all selection procedure development, test validation, and administration of testing program for over 15,000 people annually. Directed a professional staff of seven psychologists and a total staff of 19.
- 1983 to 1985 *Project Administrator, Selection Task Force.* Responsible for design and execution of company-wide studies to validate new selection procedures for major entry-level jobs. Completed criterion-related and content validation studies covering 92 percent of entry-level hiring activity. Directed a staff of 12 and administered a budget of \$400,000.

1979 to 1983

Industrial Psychologist. Responsible for test development, validation, and internal consulting on personnel research issues. Responsibilities included:

- Design and analysis of adverse impact studies on all aspects of personnel selection.
- Development and presentation of supervisory training programs in selection system development.
- Supervision of psychological screening program for nuclear power plant workers.
- Technical supervision of test administration and the application of testing policy.
- Development of research project studying the recruitment and retention of women in non-traditional jobs.
- Coordination of company participation in industry-wide test validation studies.

1978 to 1979

EDUCATIONAL TESTING SERVICE

Senior Research Assistant. Conducted special research studies involving item analysis and IRT calibration of large scale test databases. Developed instructional workshops on the use of item response theory. Provided technical assistance to state and local education agencies on program evaluation.

1978

NATIONAL ACADEMY OF SCIENCE

Research Associate to the Committee on Ability Testing. Provided staff assistance to the blue ribbon panel studying test bias. Wrote position papers in the area of employment testing. Represented the Committee at relevant meetings.

1974 to 1975

HARCOURT BRACE JOVANOVICH

Research Assistant. Participated in the development of the Metropolitan Achievement Test, including item writing and statistical analyses.

TEACHING

1986 to 1989

California School for Professional Psychology. Graduate faculty. Taught Personnel Assessment, Statistics, and Advanced Multivariate Methods for doctoral candidates in Organizational Psychology. Mentored Doctoral dissertation.

- 1980 to 1988 *University of San Francisco.* Graduate faculty. Taught Statistics and Advanced Research Design for Human Resources & Organizational Behavior major. Mentored Masters theses.
- 1977 *Long Island University.* Adjunct Faculty. Taught graduate courses in Statistics and Research Methodology.
- 1976 to 1978 *Mercy College.* Adjunct Faculty. Taught Introductory Psychology, Theories of Personality, Statistics and History of Psychology.

SPECIAL INTEREST AREAS

Diversity Measurement, Skills Assessment, and Pay Equity.

FELLOWSHIPS

- 1976 to 1977 *Fordham University.* Teaching Fellowship. Responsible for the development and evaluation of individualized, self-paced instruction in General Psychology, as well as courses in Statistics and Applied Psychology.
- 1976 *Educational Testing Service.* Summer Research Fellowship. Investigated gender and ethnic bias in testing methods.
- 1975 to 1976 *Fordham University.* Graduate Research Assistant. Assisted Drs. Anne Anastasi and John Walsh in graduate courses on Statistics and Computer Utilization.
- 1974 to 1976 *Harcourt Brace Jovanovich.* Fellowship in Psychometrics. Conducted a review of tests for gender bias in content. Also participated in test administration and validation of a general intelligence test for minority group job applicants.

PUBLICATIONS

- Ashe, R. L., & Lundquist, K. K. (2010). The Legal Environment for Assessment. In J. C. Scott & D. H. Reynolds (Eds.), *Handbook of Workplace Assessment* (pp. 643-669). San Francisco: Jossey Bass.
- Goldstein, I. L., & Lundquist, K. K. (2010). A Five-Year Journey with Coca-Cola. In J. Outtz (Ed.), *Adverse Impact: Implications for organizational staffing and high stakes selection* (pp. 473-501). New York: Routledge.
- Lundquist, K. K. (2009). *Validation of performance appraisals: Ongoing questions in a new light post Ricci and the FPA.* Paper presented at the American Employment Law Conference, October 2009.

- Lundquist, K. K. (2009). Does affirmative action still work? *Diversity Executive*, May, 2009.
- Lundquist, K. K. (2008). Beyond affirmative action: The changing face of recruitment. *Talent Management*, Vol. 4, No. 1, 18-23.
- Lundquist, K. K., Scott, J. C., & Curtis, J. R. (1995). Selection techniques for a diverse workforce. In American Bar Association (Eds.), *Equal Employment Opportunity Laws 30 Years Later*. Washington, D.C.: American Bar Association.
- Lundquist, K. K., & Jones, D. P. (1992). Skill-Based Job Analysis. *Technical & Skills Training*, February/March, 1992, 7-12.
- Jones, D. P. & Lundquist, K. K. (1991). *Construction and skilled trades selection system: Job analysis report*. Washington, D.C.: Edison Electric Institute.
- Jones, D. P. & Kappy, K. A., (1990). *Construction and skilled trades selection system: Final technical report*. Washington, D.C.: Edison Electric Institute.
- Kappy, K. A., (1979). Differential effects of decreased testing time on the verbal and quantitative aptitude scores of males and females. Unpublished doctoral dissertation, Fordham University, May 1979. (Mentor: Dr. Anne Anastasi)

PRESENTATIONS

- | | |
|------|---|
| 2011 | Lundquist, K. K. Diversity: Beyond the Requirements. Presentation at the Southern Connecticut Society for Human Resource Management, November 2011. |
| 2011 | Lundquist, K. K. Addressing the subjectivity challenge. Presentation at the American Employment Law Conference, Ojai, CA, October 2011. |
| 2010 | The Power of Measurement: Evaluating your diversity success. Presentation at the annual conference of DiversityBusiness.com, Washington, D.C., April 2010. |
| 2010 | Lundquist, K. K., & Ashe, R. L., Jr. Trends in Employment Law: <i>Ricci</i> and Beyond. Workshop presented the annual Society for Industrial and Organizational Psychology conference, Atlanta, GA, April 2010. |

- 2009 Lundquist, K. K. Validating performance appraisals: Ongoing questions in a new light. Presentation at the American Employment Law Conference, Dana Point, CA, October 2009.
- 2009 Lundquist, K. K., Scott, J. C., & Puma, M. J. "How to make lemonade ...": A recipe for moving forward after your corporate restructuring. Webinar presented by Talent Management Magazine, September 2009.
- 2009 Lundquist, K. K., Goldstein, H. & Perkins, W. The *Ricci* case in a Nutshell. Presentation at the Metropolitan Association of Applied Psychologists (METRO), New York, NY, September 2009.
- 2009 Dichter, M. S., Evans, P. C., Painter, A. M., Stillman, N. G., & Lundquist, K. K. "Understanding *Ricci*, the New Haven Firefighters Case: Implications for your employment decisions and diversity practices. Webinar presented by Morgan Lewis & Bockius LLP, August 2009.
- 2009 Lundquist, K. K. & Geier, J. A. The *Ricci* case or How to test in turbulent times. Presentation at the Northeast Region Corporate Industry Liaison Group, New York, NY, June 2009.
- 2008 Lundquist, K. K., & Scott, J. C. Testing the Test: Validation, Litigation & Risk Management. Webinar presented by Talent Management Magazine, November 2008.
- 2008 Lundquist, K. K. The Power of Measurement: Tracking your Diversity Success. Invited presentation at Nyckeltalsinstitutet AB, Stockholm, Sweden, April 2008.
- 2007 Lundquist, K. K. The Power of Measurement: Evaluating your Diversity Success. Presentation at the SHRM Workplace Diversity Conference, Philadelphia, PA, October 2007.
- 2007 Lundquist, K. K. How to determine if your company's tests pass muster. Presentation at the Workforce Opportunity Network sponsored by ORC, Dallas, TX, October 2007.
- 2007 Lundquist, K. K., Casellas, G. F., & Moan, J. P. Toward Innovation: New Insights for the Multicultural Workplace. Presentation at the Southern Connecticut Society for Human Resource Management, September 2007.

- 2007 Lundquist, K. K. Innovative approaches to testing. Testimony at the U.S. Equal Employment Opportunity Commission meeting on employer testing and screening, Washington, D. C., May 16, 2007.
- 2007 Ashe, R. L., Jr., & Lundquist, K. K. Building Legal Defensibility into your HR Processes. Workshop presented the annual Society for Industrial and Organizational Psychology conference, New York, NY, April 2007.
- 2007 Lundquist, K. K. & Casellas, G. F. Toward Innovation: Reflections on the Coca-Cola Experience. Presentation at the Chief Diversity Officer Forum, Greensboro, NC, March 2007.
- 2006 Lundquist, K. K. & Casellas, G. F. Human resource process audits: The whys, the hows and the wherefores. E-seminar presented by Workforce Performance Solutions magazine, November 2006.
- 2006 Lundquist, K. K. Latest issues in employment litigation. Presentation at the Middle Atlantic Personnel Assessment Council conference, Princeton, NJ, November 2006.
- 2006 Lundquist, K. K. Latest issues in employment litigation. Presentation at the Metropolitan New York Association of Applied Psychology, New York, June 2006.
- 2006 Lundquist, K. K. Current areas of challenge in HR practices: How to avoid costly class action settlements. Presentation at the Personnel Testing Council of Metropolitan Washington, Washington, D. C., June 2006.
- 2006 Casellas, G. F. & Lundquist, K. K. Measuring progress in diversity: Practical and legal considerations for the journey. Presentation at the annual Diversity Conference of The Conference Board, New York, May 2006.
- 2006 Lundquist, K. K. Making your case: Judicious tips for communicating with judges, juries and attorneys. Presentation at the Society for Industrial and Organizational Psychology conference, Dallas, April 2006.
- 2006 Lundquist, K. K. Employee selection and testing: What you must know. Presentation at the Pacific Employment Law Conference, Seattle, May 2006.

- 2006 Lundquist, K. K. 21st Century Employee Selection. Presentation at the American Bar Association, Section of Labor and Employment Law, Equal Employment Opportunity Committee, La Jolla, California, April 2006.
- 2005 Lundquist, K. K. Testing: What's New and What's Scary or How to Avoid the Snake Oil Salespeople. Presentation at the 24th Annual Davis, Wright, Tremaine Employment Law Seminar, Seattle, October 2005.
- 2005 Lundquist, K. K. Diversity Measurement in Organizations: The changing challenge. Presentation at the annual convention of the American Psychological Association, Washington, D. C., August 2005.
- 2005 Lundquist, K. K. Recipe for Workplace Success: Personality is the secret ingredient. Presentation at the annual convention of the International Council on Hotel, Restaurant and Institutional Education, Las Vegas, July 2005.
- 2005 Testing: What's New and What's Scary or How to Avoid the Snake Oil Salespeople. Presentation at the National Employment Law Council Conference, Chicago, April 2005.
- 2005 Lundquist, K. K., Curtis, J. C., & Snyder, D. W. Blind Judgment: An attempt to reduce adverse impact in the interview. Panel discussion at the Society for Industrial and Organizational Psychology conference, Los Angeles, April 2005.
- 2004 Put to the Test: The New Scrutiny of Employee Testing and Selection Procedures. Presentation at The American Employment Law Council, Twelfth Annual Conference, Palm Beach, Florida, October 2004.
- 2004 Lundquist, K. K. & Scott, J. C. Legal considerations when auditing your performance management system. Panel discussion at the Society for Industrial and Organizational Psychology conference, Chicago, April 2004.
- 2002 The Evolving Definition of Work. Presentation to the Connecticut Quality Improvement Association, Wallingford, CT, October 2002.

- 2002 In the Line of Fire: From the HR Process Design Perspective. Presentation to the Equal Employment Advisory Council's Training Program on Employment Discrimination Class Actions, Alexandria, Virginia, April 2002.
- 2002 What I/Os Need to Know About the Skill Standards Movement. Panel discussion at the Society for Industrial and Organizational Psychology conference, Toronto, April 2002.
- 2001 The Litigation Landscape: How it Affects our Role as I/O Psychologists. Presentation to the Society for Industrial and Organizational Psychology Doctoral Consortium, San Diego, California, April 2001.
- 2000 Pay Equity: The New Discrimination Frontier. Workshop presented by Economic Research Services, Atlanta, Georgia, October 2000.
- 2000 Use and Abuse of Experts. The American Employment Law Council, Eighth Annual Conference, Hot Springs, Virginia, October 2000.
- 1999 Compensation Disparities and Organizational Realities. American Bar Association, Section of Labor and Employment Law, Equal Employment Opportunity Committee, Boca Raton, Florida, March 1999.
- 1997 Downsizing: Lessons from the Firing Line. Georgia State University, Human Resources Round Table, Atlanta, Georgia, January 1997.
- 1997 Recent developments in employment litigation. Workshop presented with R. Lawrence Ashe, Jr., Esq. at the Society for Industrial and Organizational Psychology, St. Louis, Missouri, April, 1997.
- 1996 Success factors for I/O doctoral programs: Planning for the 21st century. Panel discussion presented at the Society for Industrial and Organizational Psychology, San Diego, California, April 1996.
- 1995 Selection techniques for a diverse workforce. Presented at the American Bar Association Section of Labor and Employment Law Anniversary Celebration, Washington, D.C., May 1995.
- 1994 Training to the top: Workforce skills and global competitiveness. Symposium presented at the Society for Industrial Organizational Psychology, Nashville, TN, April 1994.

- 1992 Attacking the skills gap: A report from the firing line. Symposium presented at the Society for Industrial and Organization Psychology, Montreal, Ontario, Canada, May 1992.
- 1991 Skill-based job analysis: A strategy for closing the skills gap. Paper presented with Michelle M. Crosby at the Society for Industrial and Organizational Psychology, St. Louis, MO, April 1991.
- 1990 The role of the analyst in the job analysis process. Compiler or interpreter? Paper presented at the annual conference of the International Personnel Management Association Assessment Council, San Diego, CA, June 1990.
- 1990 An overview of today's testing technology. Paper presented at the Annual Labor and Employment Law Conference of Seyfarth, Shaw, Fairweather & Geraldson, Chicago, IL, June 1990.
- 1990 Recent developments in EEO. Workshop presented with R. Lawrence Ashe, Jr. Esq., at the annual conference of the Society for Industrial and Organizational Psychology, Miami Beach, FL, April 1990.
- 1990 Technology, automation and their human resources implications. Paper presented the Local Government Personnel Association, Washington, D.C., March 1990.
- 1989 Employee selection systems: Interviews, written and physical tests, experience checks, differential scoring, and formal validation studies after *Hopkins, Atonio and Watson*. Workshop presented at the National Employment Law Institute Conference on EEO in Federal, State, and Local Government, Washington, D.C., September 1989.
- 1989 Designing and conducting large-scale research projects. Workshop presented with David P. Jones at the annual conference of the Society for Industrial and Organizational Psychology, Boston, MA, April 1989.
- 1988 Considerations in setting cutoff scores: Legal and professional standards. Workshop presented with David P. Jones at the annual Edison Electric Institute Test Users Conference, Dearborn, MI, October 1988.

- 1983 Employment selection and testing: A review of legal and practical considerations. Paper presented at the California Employment Law Conference, San Francisco, CA, November 1983.
- 1980 Achievement level testing effects on Rasch item difficulty estimates. Paper presented at the annual meeting of the American Educational Research Association, Boston, MA, April 1980.
- 1979 The impact of test speededness of Rasch item calibrations. Paper presented with A.S. Cohen at the annual meeting of the American Psychological Association, New York, NY, September 1979.

PROFESSIONAL AFFILIATIONS

Phi Beta Kappa

American Psychological Association

Society for Industrial and Organization Psychology

Financial Officer and Member of the Executive Committee, Society for Industrial and Organization Psychology, incoming 2012

Chair, SIOP Doctoral Consortium 2005

National Association of Women Business Owners

National Association of Female Executives

LICENSES

Licensed as a Psychologist in the State of Connecticut, No. 001967

AWARDS

Named one of "America's Top Diversity Champions for 2010" by DiversityBusiness.com.

Received the 2010 Diversity Policy/Advocacy Award from Hartford Business Journal.

Finalist in the 2009 Stevie Awards for Women in Business: Best Entrepreneur – Service

Businesses - Up to 100 Employees - Business Services; APT wins Best Overall Company of the

Year – Service Businesses – Up to 100 Employees – Business Services.

Human Resource Vendor of the Year 2009, Society for Human Resource Management, Southern Connecticut Chapter.

Finalist in the 2007 Ernst & Young Entrepreneur of the Year Award for Metropolitan New York Region.

Connecticut Woman Business Owner of the Year, 2002.

BOARD MEMBERSHIPS

Board Member, National Council for Research on Women and member of the Advisory Board of the Council's Corporate Circle, 2010 -- present.

Board Member, Connecticut Business & Industry Association, 2007 – present.

Board Member and Chair of Education Committee, Maritime Aquarium, 2007 - present.

Board Member, Volunteer Center of Southwestern Fairfield County, 2003-2007.

President, Wade Foundation, 2001-present.

APPOINTMENTS

Sworn member of the external advisory board for the U.S. Department of State's Foreign Service

Officer Examination, 2013-2016.

Member of the expert panel on assessment for the National Skills Standards Board (NSSB) and chair of the Endorsement Review Panel for the NSSB, 1999-2003.

**Addendum to Resume for
KATHLEEN KAPPY LUNDQUIST, Ph.D.**

Testimony as an expert in past four years:

- | | |
|----------------|--|
| 2012 – present | <u>Andrews, et al. v. City of New York.</u> Civil Action No. 10-cv-2426 (SHS) (MD). |
| 2011 – present | <u>Ronald Hojnacki v. Exelon Nuclear Security Services, et al.</u> Civil Action No. L-1727-10 (Superior Court of New Jersey, Law Division, Ocean County). |
| 2012 – present | <u>Susie Knott v. Dollar Tree Stores, Inc.</u> Civil Action No. 7:06-cv-01553-LSC (USDC N. D. Alabama, Southern Division). |
| 2012 – 2013 | <u>Chelsie Richardson, Cynthia Ann Collins, Beryl Dautat v. Dollar Tree Stores, Inc.</u> Civil Action No. 7:08-cv-00693-LSC (USDC N. D. Alabama, Southern Division). |
| 2011 – present | <u>Katharine Bush, et al. v. Ruth’s Chris Steak House, Inc., et al.</u> Civil Action No. 1:10-cv-01721 (USDC District of Columbia.) |
| 2011 – 2012 | <u>Artis, et al. v. John Deere Landscapes.</u> Civil Action No. C 10-05289 WHA (MEJ) (N. D. California). |
| 2011 – present | <u>EEOC v. Abercrombie & Fitch Stores, Inc.</u> Civil Action No. 5:10-cv-03911-EJD (USDC N. D. California). |
| 2011 – 2012 | <u>Hageman, et al. v. Accenture, LLP.</u> Civil No. 10-CV-01739 (USDC MN). |
| 2010 – 2012 | <u>Bazile, et al. v. City of Houston.</u> Civil Action No. 4:08-cv-02404 (USDC Southern District of Texas, Houston Division). |
| 2010 – 2011 | <u>Perkins, et al. v. Southern New England Telephone Company.</u> Civil Action No. 3:07CV967 (USDC CT). |
| 2010 – 2011 | <u>EEOC v. Abercrombie & Fitch Stores, Inc.</u> Civil No. 09-CIV-602-GKF-FHM (USDC N. D. Oklahoma). |
| 2010 – 2012 | <u>Garcia, et al. v. Oracle Corporation, et al.</u> Case No. RG07321026 (Superior Court of the State of California, County of Alameda). |
| 2009 – present | <u>Susie Knott, et al. v. Dollar Tree Stores, Inc.</u> Civil Action No. 08-P-1267-S (USDC N. D. Alabama). |

2009 EEOC v. J. M. Hollister, LLC and Abercrombie & Fitch Stores, Inc. Civil Action No. 4:08CV1470 (USDC E. D. Missouri).

2009 Marcus, et al. v. PQ Corporation. Civil Action No. 07-2075 (USDC E. D. Pennsylvania).

2008 – 2009 DFEH v. Abercrombie & Fitch Stores, Inc. Case # E-20078-D-0364-00e (Fair Employment and Housing, State of California).

2008 – 2012 Ronnie Jones, et al. v. City of Boston, et al. Civil Action No. 05-11832-GAO (D. Massachusetts).

2008 – 2009 Cassandra Welch, et al. v. Eli Lilly & Company. Civil Action No. 1:06-cv-0641-RLY-JMS (S. D. Indiana).

2008 – 2009 Katherine Puffer, et al. v. Allstate Insurance Company. Case No. 04 C 5764 (N. D. Illinois).

2007 – 2009 Employees Committed for Justice, et al. v. Eastman Kodak Company. Civil Action No. 6:04-CV-06098-CJS(F) (W.D. New York).

2007 – 2009 The Port Authority Police Asian Jade Society of New York & New Jersey Inc., et al. v. The Port of Authority of New York and New Jersey. Cause No. 05-CV-3835 (S.D. New York).

2006 – 2012 Simpson et al. v. New York State Department of Civil Service, et al. Cause No. 04-CV-1184 (N. D New York).

2006 – 2011 Ebbert et al. v. Nassau County et al. Civil Action No. CV-05 5445 (FB)AKT) (E. D. New York).

ATTACHMENT B

DOCUMENTS REVIEWED

<i>Electronic File Name</i>	<i>Document Name or Description</i>	<i>Pages</i>	<i>Bates #</i>
403	Merit Increase Guidelines	1	SJI00000403
475	Wage Generator Announcement	1	SJI00000475
1994	Field Performance Appraisal - Store Manager	1-2	SJI00010286-287
1995	Field Performance Appraisal - Store Manager	1-2	SJI00010284-285
1997	Performance Appraisal Sales	1-2	SJI00010280-281
1998	Performance Appraisal Sales	1-2	SJI00009619-620
1998	Performance Appraisal Sales	1-2	SJI00010196-197
1999	Store Performance Appraisal Sales	1-3	SJI00009636-638
1999	Performance Appraisal Sales	1-2	SJI00009404-405
2000	Store Performance Appraisal Sales	1-3	SJI00009633-635
2000	Store Performance Appraisal Sales	1-3	SJI00010186-188
2001	Store Performance Appraisal Sales	1-3	SJI00009639-641
2001	Store Performance Appraisal Store Manager	1-2	SJI00010294 -295
2002	Store Performance Appraisal Sales	1-3	SJI00009756-758
2002	Store Performance Appraisal Sales	1-3	SJI00009412-414
2003	Store Performance Appraisal Sales	1-3	SJI00009759-761
2004	Jared Performance Appraisal Sales	1-3	SJI00010177-179
2004	Store Performance Appraisal Sales	1-3	SJI00009415-417
2005	Jared Performance Appraisal Assistant General Manager	1-4	SJI00009774 -777
2005	Store Performance Appraisal Store Manager	1-4	SJI00009902-905
2006	Jared Performance Appraisal Sales	1-3	SJI00009778-780
2006	Store Performance Appraisal Sales (Blank)	1-4	SJI00000046-049
2007	Jared Performance Appraisal Sales	1-3	SJI00009729-731
2007	Store Performance Appraisal Sales	1-4	SJI00009442-445
2008	Jared Performance Appraisal Sales	1-3	SJI00010477 and SJI00010478 - SJI00010479
2008	Store Performance Appraisal Sales	1-4	SJI00009340-343
2009	Store Performance Appraisal Sales	1-3	SJI00009332-334
4364	Replacement of Angelotti with Loomis	1	SJI0004364
5391	Movement of Salias to store without Manager	1	SJI0005391
10881	Performance Appraisal Policy	1	SJI00010881
01-23-13 JOCK V STERLING - LYNCH - EXH 1	Organizational Charts	1-8	SJI00001929-00001936
01-23-13 JOCK V STERLING - LYNCH - EXH 10	Executive Summary Report	1-2	SJI01038409-8410
01-23-13 JOCK V STERLING - LYNCH - EXH 11	TIP Line/Internal Investigation Summary Report	1	SJI00687512
01-23-13 JOCK V STERLING - LYNCH - EXH 12	Email re: sexual harassment	1	SJI00994469
01-23-13 JOCK V STERLING - LYNCH - EXH 13	Email re: career changes	1	SJI00286305

Electronic File Name	Document Name or Description	Pages	Bates #
01-23-13 JOCK V STERLING - LYNCH - EXH 14	Proposed Penalties for Non-Compliance with Career Advancement Register Rules in 2008	1	SJI00280570
01-23-13 JOCK V STERLING - LYNCH - EXH 15	Programmic Relief Update	1	SJI00285596
01-23-13 JOCK V STERLING - LYNCH - EXH 2	Employee Relations Procedures Manual	1-92	SJI00470098-00470188
01-23-13 JOCK V STERLING - LYNCH - EXH 3	Statement of Standards of Conduct and Business Ethics Policy	1-6	SJI00002380-00002385
01-23-13 JOCK V STERLING - LYNCH - EXH 4	Field Human Resources Follow-Up Memorandum	1-3	SJI01036414-416
01-23-13 JOCK V STERLING - LYNCH - EXH 5	June 2011 Scorecard	1	SJI567145
01-23-13 JOCK V STERLING - LYNCH - EXH 6	Region Trend Analysis	1-2	N/A
01-23-13 JOCK V STERLING - LYNCH - EXH 7	Email re: legal claims	1-2	SJI_EEOC00208126-127
01-23-13 JOCK V STERLING - LYNCH - EXH 8	Employee Counseling Report - written by Christopher Newton	1-2	CL-STR008971-8972
01-23-13 JOCK V STERLING - LYNCH - EXH 9	Memo (Redacted) re: Molnare's history	1-2	SJI00181603-1604
01-23-13 laryssa jock v sterling jewelers - michael lynch - confidential	Deposition of Michael Lynch	N/A	N/A
01-23-13 laryssa jock v sterling jewelers - michael lynch - confidential	Deposition of Michael Lynch, rough (TIF version)	N/A	N/A
01-24-13 JOCK V STERLING - BECK - EXH 1	Organizational Charts	1-8	SJI00001929-00001936
01-24-13 JOCK V STERLING - BECK - EXH 10	Memo re: MIW Placement improvement	1-16	SJI00712196-712211
01-24-13 JOCK V STERLING - BECK - EXH 11	Wage Generator Presentation (with Beck's comments)	1-26	SJI_EEOC0010615-10617
01-24-13 JOCK V STERLING - BECK - EXH 12	Wage Generator Presentation	1-22	SJI_EEOC0012929-129312
01-24-13 JOCK V STERLING - BECK - EXH 13	Memo re: 2009 Performance Appraisals and Merit Increases	1	SJI_EEOC00289777
01-24-13 JOCK V STERLING - BECK - EXH 14	Summary Highlights: Pay Practice Discussion	1	SJI_EEOC00121132
01-24-13 JOCK V STERLING - BECK - EXH 15	Email re: Wage Transparency in Colorado	1-2	SJI_EEOC00215336-337
01-24-13 JOCK V STERLING - BECK - EXH 16	Email re: EEOC suit	1	SJI_EEOC00123812
01-24-13 JOCK V STERLING - BECK - EXH 2	Memo re: Littlefield District Visit	1-2	SJI01046335-336
01-24-13 JOCK V STERLING - BECK - EXH 3	Memo re: Executive Committee Meeting	1	SJI00636264-265
01-24-13 JOCK V STERLING - BECK - EXH 4	Recommendations for Mall Management Changes	1-3	SJI00005325-5327

Electronic File Name	Document Name or Description	Pages	Bates #
01-24-13 JOCK V STERLING - BECK - EXH 5	Email re: management change	1	SJI00559737
01-24-13 JOCK V STERLING - BECK - EXH 6	Email re: promotions without sales	1	SJI00063892
01-24-13 JOCK V STERLING - BECK - EXH 7	Email re: reason for management recommendation	1	SJI00089122
01-24-13 JOCK V STERLING - BECK - EXH 8	Email re: demotions	1	SJI00086038
01-24-13 JOCK V STERLING - BECK - EXH 9	Email re: interview of candidate	1	SJI00636534
01-24-13 JOCK V STERLING - HARRIS - EXH 1	It's a Matter of Respect: Recognizing, Preventing, and Responding to Discrimination & Harassment	1-26	SJI00033697-33722
01-24-13 JOCK V STERLING - HARRIS - EXH 2	It's a Matter of Respect: Script for Presenters	1-16	SJI00008943-8957
01-24-13 JOCK V STERLING - HARRIS - EXH 3	The HR Basics	1-25	SJI00187713-187737
01-24-13 JOCK V STERLING - HARRIS - EXH 4	District Manager Scenario cards	1-6	SJI00052159-52164
01-24-13 JOCK V STERLING - HARRIS - EXH 5	2010 Manager's Meeting Seminar Outline	1-47	SJI_EEOC00469867-469913
01-24-13 LARYSSA JOCK V STERLING JEWELERS - JOSEPH BECK - CONFIDENTIAL	Deposition of Joseph Beck	N/A	N/A
01-24-13 laryssa jock v sterling jewelers - patrice harris - confidentialia	Deposition of Patrice Harris	N/A	N/A
01-24-13 LARYSSA JOCK V STERLING JEWELERS - PATRICE HARRIS - CONFIDENTIA	Deposition of Patrice Harris (TIF version)	N/A	N/A
01-24-13 laryssa jock v sterling jewelers joseph beck confidential	Deposition of Joseph Beck (TIF version)	N/A	N/A
02-06 and 08-13 JOCK V STERLING - LIEBLER - EVERTON - FERNHOLZ - EXH 1	Organizational Charts	1-9	SJI00001929-1936
02-06 and 08-13 JOCK V STERLING - LIEBLER - EVERTON - FERNHOLZ - EXH 1	Organizational Charts	1-9	SJI00001929-1936
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 10	Payroll % to Sales Report - YTD June 2009	1-3	SJI_EEOC00195510, SJI00095160, SJI009516 (numbers cut off)
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 11	Store Operations Meeting Notes	1-4	SJI/EEOC00063354-357
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 12	Recommended Manager Change	1	SJI/EEOC00035245

Electronic File Name	Document Name or Description	Pages	Bates #
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 13	Recommended Manager Change	1-3	SJI0005325-327
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 14	Recommended Manager Change	1-6	SJI00093890-895
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 15	Email regarding Alonzo Longshore	1	SJI_EEOC00150941
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 16	Agenda: Store Operations Meeting	1-6	SJI_EEOC00107272-277
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 17	California Managers Rate Re-Classification	1-2	SJI_EEOC00343203-204
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 18	Email regarding issues surrounding HR	1-2	SJI_EEOC00206672-673
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 19	Email regarding retention of employees	1	SJI_EEOC00389708
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 2	Organizational Charts	1-2	SJI00001948-1949
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 20	Letter from Melissa Corey to CEO of Sterling	1-4	E000010770-773
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 21	Email regarding MCF posting	1	SJI00280914
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 22	Blank email with subject line regarding HRIBAR, Brittany Store #2722	1	SJI00280923
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 23	Email regarding promoting to Assistant Manager	1	SJI00288576
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 3	Wage Generator Phase 3 Kick-Off Meeting	1-2	SJI_EEOC00222100-101
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 4	Email regarding Wage Rate Generator meetings	1	SJI_EEOC00122880
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 5	Report for VPRO's that were paid above wage ceiling for district	1	SJI_EEOC004039
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 6	Email regarding wage adjustments	1	SJI_EEOC00208196
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 7	Email with attached memo raises and compensation	1-5	SJI01049831-835

Electronic File Name	Document Name or Description	Pages	Bates #
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 8	Email regarding raise exception for Jessica Skolada	1-2	SJI_EEOC00459134-135
02-06 and 08-13 JOCK V STERLING - LIEBLER - FERNHOLZ - EXH 9	Email regarding raise exception for Hilsa Hilman	1-3	SJI_EEOC00309594-596
02-06 and 08-13 JOCK V STERLING - FERNHOLZ - EXH 1	Organizational Charts	1-9	SJI00001929-1936
02-06 and 08-13 JOCK V STERLING - FERNHOLZ - EXH 2	Organizational Charts	1-2	SJI00001948-1949
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 10	Memo re: MIW Placement improvement	1-16	SJI00712196-712211
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 11	Email with notice of raise attached	1-5	SJI01049831-835
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 12	Recommended Manager Change	1-2	SJI00004334-335
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 13	Recommended Manager Change (Corby Brown)	1	SJI00004364
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 14	Recommended Manager Change (Ezra McCallister)	1-2	SJI00004792-793
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 15	Email with Recommended Manager Change form attached	1-8	SJI00130911-918
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 16	Email regarding Michael Vogler	1-7	SJI00130982-988
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 17	Email with questions regarding charges	1-2	SJI00705196-197
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 18	Email re: MBOs	1	N/A
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 19	Email regarding employees attending classes	1-2	N/A
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 20 Part 1	Fernholz Mall Division, Cont'd	1-29	SJI0019266-269
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 20 Part 2	Fernholz Mall Division	1-29	SJI0019263-266
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 21	Email and findings related to Paredo complaint about Pearson	1-5	SJI00242052-056
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 3	Email with Divisional VP Administrative Assistant Manual	1-9	SJI00189687-695
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 4	Email re: executive committee due dates	1	N/A
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 5	Jared Executive Committee Notes - Dated March 13, 2008	1-5	N/A
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 6	Jared Executive Committee Notes - Dated April 17, 2008	1-4	N/A
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 7	Report on store performance	1-2	SJI00706826-28
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 8	Email regarding unannounced visit to store	1-3	N/A

Electronic File Name	Document Name or Description	Pages	Bates #
02-06-13 JOCK V STERLING - FERNHOLZ - EXH 9	Store Operations Meeting Notes	1-3	N/A
02-06-13 laryssa jock v sterling jewelers - barry fernholz	Deposition of Barry Fernholz (TIF version)	N/A	N/A
02-06-13 laryssa jock v sterling jewelers - barry fernholz	Deposition of Barry Fernholz (TXT version)	N/A	N/A
02-08-13 JOCK V STERLING - EVERTON - EXH 10	Email regarding promotional/hiring practices in Tampa	1-2	SJI/EEOC00086162
02-08-13 JOCK V STERLING - EVERTON - EXH 11	Recommended Manager Change	1-2	SJI/EEOC00086165-167
02-08-13 JOCK V STERLING - EVERTON - EXH 12	Recommended Manager Change	1	SJI/EEOC00077365
02-08-13 JOCK V STERLING - EVERTON - EXH 13	Memo regarding Molanare's history of employee relations issues	1-2	SJI_EEOC00094535-536
02-08-13 JOCK V STERLING - EVERTON - EXH 14	Email regarding promotion of Avind Mohip	1-2	SJI/EEOC0077362-363
02-08-13 JOCK V STERLING - EVERTON - EXH 15	Email regarding no promotion for Veronica Allen	1	SJI_EEOC00479055
02-08-13 JOCK V STERLING - EVERTON - EXH 16	Jared Regional Trend Analysis	1-4	N/A
02-08-13 JOCK V STERLING - EVERTON - EXH 17	2006 Resolve - List of VPs with Store, State, District Manager	1	SJI_EEOC00288387
02-08-13 JOCK V STERLING - EVERTON - EXH 2	Regional Meeting Agenda: October 23-24, 2007	1-3	SJI/EEOC00070608-70610
02-08-13 JOCK V STERLING - EVERTON - EXH 3	Email exchange regarding management compensation	1	SJI_EEOC0033207
02-08-13 JOCK V STERLING - EVERTON - EXH 4	Email regarding hiring Jared Schwartz	1-2	SJI_EEOC00192179-180
02-08-13 JOCK V STERLING - EVERTON - EXH 5	Email regarding exceptions to the Wage Generator	1	SJI_EEOC00229740
02-08-13 JOCK V STERLING - EVERTON - EXH 6	Employee compensation information spreadsheet (Spring 2002)	1-35	N/A
02-08-13 JOCK V STERLING - EVERTON - EXH 7	Employee compensation information spreadsheet (Fall)	1-32	N/A
02-08-13 JOCK V STERLING - EVERTON - EXH 8	Employee compensation information spreadsheet (Fall)	1-17	N/A
02-08-13 JOCK V STERLING - EVERTON - EXH 9	Project and Potential FY10-2009	1	SJI/EEOC00058186
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 1	Organizational Charts	1-9	SJI00001929-1936
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 10	Declaration of Alan Mong	1-3	SJI_EEOC00288089-091
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 11	Resolve Findings for Marie Wolf	1-3	SJI00288032-034
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 13	Resolve Complaint filed by Maria House	1-4	SJI_EEOC00287961-964
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 14	Resolve Findings for Maria House	1-4	SJI_EEOC00287957-960

Electronic File Name	Document Name or Description	Pages	Bates #
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 15	Resolve Program: Step 2 Panel Selection	1-24	SJI_EEOC00288323-346
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 16	The Resolve Program: Administrative Details	1-10	SJI_EEOC00288313-322
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 17	Memo regarding two cases: Ladrido v. Sterling & Woods v. Sterling	1-9	SJI_EEOC00802769-777
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 18	Memo re: Colorado Wage Transparency Act	1-2	SJI_EEOC00210533-534
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 19	Wage Generator Requirements Definition	1-5	SJI_EEOC00626284-288
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 2	Organizational Charts	1	SJI00287120
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 20	Email with Resolve Powerpoint attached	1-21	SJI01253922-942
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 21	Email with Resolve Conference 5 attached	1-5	SJI01034755-759
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 22	Company Totals 2006	1-15	SJI01050678
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 23	Email re: untimely filing of Resolve claim	1-2	SJI01006174-175
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 24	Email re: denial of Resolve claim	1-2	SJI01006176-177
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 25	Resolve Complaint filed by Lisa McConnell	1-9	CL-STR001230-238
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 26	Resolve findings for Lisa McConnell	1-2	SJI01255263-264
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 27	Email re: new EEOC charge	1	SJI01050751
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 28	Email with Sterling's position on Gina Gardner	1-2	SJI01034753-754
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 29	Letter from attorneys regarding fairness of Resolve Panel	1-6	CL-STR005041-046
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 3	Organizational Charts	1	SJI00288185
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 30	Information from Dispute Resolution Partners	1-7	CL-STR009028-034
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 31	Email from Spagnola requesting list of claimants for Mediation claims	1	SJI01019435
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 32	Email with suggested response letter to Mrs. LeWitter	1-2	SJI01019288-89
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 33	Resume of Diane Dietrick	1-3	SJI00682309-311
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 34	Email with Mediation Packet attached	1-9	SJI00581716-724
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 35	Email re: mailing mediation packet to claimant	1	SJI01255283
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 36	Email with October HR Scorecard attached	1-2	SJI01006250-251

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02-12-13 JOCK V STERLING - SPAGNOLA - EXH 37	Employee Counseling Report (Diane Melker)	1-2	CL-STR008971-8972
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 4	Resolve Program: Alternate Dispute Resolution	1-2	CL-STR001251-252
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 5	The Resolve Program: Alternate Dispute Resolution (ADR)	1-9	SJI_EEOC00288378-386
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 6	Letter re: Resolve Program, Step 1	1	SJI_EEOC00287937
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 7	Proposed Standard Operating Procedure for Resolve Step 1 Claim	1-2	SJI_EEOC00288311-312
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 8	Memo re: Resolve items to discuss	1-3	SJI_EEOC00584619-621
02-12-13 JOCK V STERLING - SPAGNOLA - EXH 9	Resolve Complaint filed by Marie Wolf	1-5	SJI_EEOC00288035-039
02-12-13 laryssa jock v sterling jewelers - joe spagnola - confidential - Vol. I	Deposition of Joe Spagnola (TXT version)	N/A	N/A
02-12-13 laryssa jock v sterling jewelers - joe spagnola - confidential - Vol. I	Deposition of Joe Spagnola (TIF version)	N/A	N/A
02-13-13 JOCK V STERLING - BERGER - EXH 1	Managing Your Wage Rates 2008	1-54	SJI01255921-974
02-13-13 JOCK V STERLING - BERGER - EXH 2	Wage Rate Generator (PPT presentation)	1-26	SJI01046400-425
02-13-13 JOCK V STERLING - BERGER - EXH 3	Email concerning raising wage rates for employee based on Generator	1	SJI00966249
02-13-13 JOCK V STERLING - BERGER - EXH 4	Wage Rate Generator (Report from Sterling)	1-8	SJI00000440-446
02-13-13 JOCK V STERLING - BERGER - EXH 5	Wage Generator: Wage Override Analysis (PPT presentation)	1-29	SJI01256256-284
02-13-13 JOCK V STERLING - BERGER - EXH 6	Email regarding Wage Rate Generator	1	SJI00733118
02-13-13 JOCK V STERLING - BERGER - EXH 7	Email regarding changes to Spring cycle	1-2	SJI00182934-935
02-13-13 JOCK V STERLING - BERGER - EXH 8	Compensation Benefits: Wellness Services & Programs - HR/Travel Fact Sheet	1-58	SJI_EEOC00288991-289048
03-08-13 JOCK V STERLING - PARKS - EXH 1	Email with unspecified list of positions and experience from Sterling Jewelers	1	SJI00447101
03-08-13 JOCK V STERLING - PARKS - EXH 10	Field HR Performance Metrics: Quarterly Report - April/May/June 2008	1-6	SJI01036976-981
03-08-13 JOCK V STERLING - PARKS - EXH 11	Email re: exception to Wage Generator	1	SJI_EEOC00224684
03-08-13 JOCK V STERLING - PARKS - EXH 12	Email re: changes in wages for two employees	1	SJI_EEOC00362424
03-08-13 JOCK V STERLING - PARKS - EXH 2	Sterling Jewelers Position Description - Human Resources Specialist	1-2	SJI01256061-062
03-08-13 JOCK V STERLING - PARKS - EXH 3	Employee Relations Procedures Manual	1-92	SJI00470098-00470188

Electronic File Name	Document Name or Description	Pages	Bates #
03-08-13 JOCK V STERLING - PARKS - EXH 4	Letter from Littler Mendleson to EEOC regarding Marie Wolf charges	1-6	CL-STR000123-128
03-08-13 JOCK V STERLING - PARKS - EXH 5	The HR Basics (PPT presentation)	1-26	SJI00187713-187737
03-08-13 JOCK V STERLING - PARKS - EXH 6	Email re: HR Basics powerpoint	1	SJI00293979
03-08-13 JOCK V STERLING - PARKS - EXH 7	Company Totals 2006	1-16	SJI01050678
03-08-13 JOCK V STERLING - PARKS - EXH 8	Memo: Trip Report Summary	1-2	SJI01040452-453
03-08-13 JOCK V STERLING - PARKS - EXH 9	Field Human Resources Monthly Activity Report	1-8	SJI01036924-931
03-20-13 JOCK V STERLING - LIGHT - EXH 1	Email re: January 2012 HR reports	1-17	SJI00524026-4042
03-20-13 JOCK V STERLING - LIGHT - EXH 10	2008 Team Satisfaction Survey Analysis and Recommendations: Company Wide Results	1-3	SJI/EEOC00049189-191
03-20-13 JOCK V STERLING - LIGHT - EXH 11	Memo re: Compensation Strategy with watson Wyatt	1	SJI00420794
03-20-13 JOCK V STERLING - LIGHT - EXH 12	Email re: Wage Generator	1	SJI_EEOC00192754
03-20-13 JOCK V STERLING - LIGHT - EXH 13	Memo re: Sr. Operating Committee Minutes	1-4	SJI_EEOC00192648-651
03-20-13 JOCK V STERLING - LIGHT - EXH 14	Memo re: Employee Satisfaction Survey	1-2	SJI/EEOC00039546-547
03-20-13 JOCK V STERLING - LIGHT - EXH 15	Email re: Store 477	1-2	SJI_EEOC00193163-3164
03-20-13 JOCK V STERLING - LIGHT - EXH 16	Orientation for Michael Barnes	1-21	SJI_EEOC00750589-609
03-20-13 JOCK V STERLING - LIGHT - EXH 2	Store Operations/Operations Administration	1-3	SJI_EEOC00192393-395
03-20-13 JOCK V STERLING - LIGHT - EXH 3	Memo re: Employee Population/Wage Information	1-2	SJI_EEOC00297353-354
03-20-13 JOCK V STERLING - LIGHT - EXH 4	Memo re: 2009 spring performance appraisals a nd merit increases	1	SJI_EEOC00289771
03-20-13 JOCK V STERLING - LIGHT - EXH 5	Jared General manager Bonus Plan	1-5	SJI_EEOC00371550
03-20-13 JOCK V STERLING - LIGHT - EXH 6	Memo re: Field Human Resources Trend Analysis	1-3	SJI_EEOC00226012-6014
03-20-13 JOCK V STERLING - LIGHT - EXH 7	Memo re: HR 2006 Trend Analysis	1-3	SJI_EEOC00394341-343
03-20-13 JOCK V STERLING - LIGHT - EXH 8	Letter from Melissa Corey to CEO of Sterling	1-4	E000010770-773
03-20-13 JOCK V STERLING - LIGHT - EXH 9	Follow up re: Mima	1	SJI_EEOC00207647
03-20-13 laryssa jock v sterling jewelers - mark light - confidential - Vol. I	Deposition of Mark Light (PTX version)	N/A	N/A

Electronic File Name	Document Name or Description	Pages	Bates #
03-20-13 laryssa jock v sterling jewelers - mark light - confidential - Vol. I	Deposition of Mark Light (TXT version)	N/A	N/A
03-21-13 JOCK V STERLING - MENNETT - EXH 1	Position Description – Regional Human Resources Specialist	1-2	SJI01256061-6062
03-21-13 JOCK V STERLING - MENNETT - EXH 10	Company Totals 2006	1-15	SJI1050678
03-21-13 JOCK V STERLING - MENNETT - EXH 11	Letter re: charges of Marie Wolf	1-6	CL-STR000123-128
03-21-13 JOCK V STERLING - MENNETT - EXH 12	Executive Summary Report re: Gordon Lee Pearson	1-4	SJI00242053-2056
03-21-13 JOCK V STERLING - MENNETT - EXH 13	Field Recruiting: Partnership with Field HR-Discrimination & Harassment Complaints	1-5	SJI01033560-6564
03-21-13 JOCK V STERLING - MENNETT - EXH 14	Memo re: Activity Report for August 2004	1-2	SJI01034364-365
03-21-13 JOCK V STERLING - MENNETT - EXH 15	Field HR Performance Metrics: Quarterly Report - 3rd Quarter of 2008	1-10	SJI01041228-1235
03-21-13 JOCK V STERLING - MENNETT - EXH 16	E-Mail exchange re: New charges	1	SJI01020337
03-21-13 JOCK V STERLING - MENNETT - EXH 17	Employee Counseling Report for Diane Thelker	1-2	CL-STR008971-972
03-21-13 JOCK V STERLING - MENNETT - EXH 18	Colorado Wage Transparency Act	1-2	SJI_EEOC00210533-534
03-21-13 JOCK V STERLING - MENNETT - EXH 19	Recommended Management Change for Melinda Norton	1-6	SJI00065656-5661
03-21-13 JOCK V STERLING - MENNETT - EXH 2	Field Human Resources Monthly Activity Report - Performance and Compliance Management-Dated January 2012	1-6	SJI00595883-5888
03-21-13 JOCK V STERLING - MENNETT - EXH 20	Supplemental Declaration of Susan E. Crump	1-10	CL-STR009501-9510
03-21-13 JOCK V STERLING - MENNETT - EXH 21	Deposition of Joe Spagnola	1-4	N/A
03-21-13 JOCK V STERLING - MENNETT - EXH 22	Letter from Resolve Program to Marie Wolf	1-3	SJI_EEOC00288032-034
03-21-13 JOCK V STERLING - MENNETT - EXH 23	Field Human Resources Overview	1-18	SJI00595606-9562
03-21-13 JOCK V STERLING - MENNETT - EXH 24	Memo re: Field HR 2006 Trends Analysis	1-3	SJI_EEOC00394341-343
03-21-13 JOCK V STERLING - MENNETT - EXH 25	Employment Litigation: Claims Activity and Compliance Concerns - Data January through August of 2008	1-8	SJI_EEOC00395024-031
03-21-13 JOCK V STERLING - MENNETT - EXH 26	Diversity-Related Complaint Trends	1	SJI_EEOC00394337
03-21-13 JOCK V STERLING - MENNETT - EXH 27	Email re: New Charges and Lawsuit	1-2	SJI_EEOC00125856-857
03-21-13 JOCK V STERLING - MENNETT - EXH 28	Memo re: proposed issues code additions	1	SJI_EEOC00225860

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03-21-13 JOCK V STERLING - MENNETT - EXH 29	Memo re: Michael Molanare's history of issues	1-2	SJI_EEOC00094535-536
03-21-13 JOCK V STERLING - MENNETT - EXH 3	Memo re: Field HR Staff Guidelines and Expectations	1-4	SJI00295053-5056
03-21-13 JOCK V STERLING - MENNETT - EXH 30	Email re: discriminatory promotion	1-2	SJI_EEOC00769889-890
03-21-13 JOCK V STERLING - MENNETT - EXH 31	Email re: Sterling Employee stor 1642	1-3	SJI_EEOC00769975-977
03-21-13 JOCK V STERLING - MENNETT - EXH 32	Email re: new EEOC charge	1	SJI01050751
03-21-13 JOCK V STERLING - MENNETT - EXH 33	Memo re: Colorado Wage Transparency Act	1	SJI_EEOC00210532
03-21-13 JOCK V STERLING - MENNETT - EXH 34	Corporate Communication - Colorado Wage Transparency Act	1-2	SJI_EEOC00210530-531
03-21-13 JOCK V STERLING - MENNETT - EXH 4	Email re: Harassment of Female Mgr	1-4	SJI00489716-9719
03-21-13 JOCK V STERLING - MENNETT - EXH 5	Investigation Procedures Refresher	1-3	SJI01269201
03-21-13 JOCK V STERLING - MENNETT - EXH 6	Internal Investigation - Summary Report - Sex Discrimination; hostile/abusive mgmt style	1-4	SJI01033950-3953
03-21-13 JOCK V STERLING - MENNETT - EXH 7	Report Detail - Memo re: miscellaneous harassment complaints	1-3	SJI00077389-7391
03-21-13 JOCK V STERLING - MENNETT - EXH 8	Field Human Resources Internal Investigation - Summary Report for Colin Nicome	1-4	SJI00290001-0004
03-21-13 JOCK V STERLING - MENNETT - EXH 9	Executive Summary Report re: 1218 Pay Concerns	1-2	SJI01038409-38410
03-21-13 laryssa jock v sterling jewelers - maryellen mennett Vol. I.ptx	Deposition of MaryEllen Menett (PTX version)	N/A	N/A
03-21-13 laryssa jock v sterling jewelers - maryellen mennett Vol. I.txt	Deposition of MaryEllen Menett (TXT version)	N/A	N/A
04-04-13 JOCK V STERLING - LUTH - EXH 30 UNMARKED	I.T. Request Form	1-26	SJI00008603-08627
04-04-13 JOCK V STERLING - LUTH - EXH 34	Memo re: New Employee effectiveness	1-7	SJI01255875-5881
04-04-13 JOCK V STERLING - LUTH - EXH 35	Wage Rate Generator - Joe Beck PPT presentation	1-26	SJI01046400-6425
04-04-13 JOCK V STERLING - LUTH - EXH 36	Wage Generator (FIS Version)	1-13	SJI00003431-3443
04-04-13 JOCK V STERLING - LUTH - EXH 37	Email re: WG Reassignments	1-2	SJI00184813-4812
04-04-13 JOCK V STERLING - LUTH - EXH 38	Wage Rate Generator	1-7	SJI0000440-446
04-04-13 JOCK V STERLING - LUTH - EXH 39	Email re: WG Example sheets	1-3	SJI00239338-340
04-04-13 JOCK V STERLING - LUTH - EXH 40	Memo re: New Hire Merit Analysis	1-5	SJI01255870-874

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04-04-13 JOCK V STERLING - LUTH - EXH 41	Unspecified competency list	1-6	N/A
04-04-13 JOCK V STERLING - LUTH - EXH 43	Memo re: Manager-in-Waiting Program FY2010-360 Analysis	1-4	SJI01046760-4761
04-04-13 JOCK V STERLING - LUTH - EXH 44	Memo re: Manager-in-Waiting Program FY2009-360 Analysis	1-4	SJI00472313-316
04-04-13 JOCK V STERLING - LUTH - EXH 45	Memo re: FY12 Wage Generator Scoping	1-6	SJI_EEOC00292640-645
04-04-13 JOCK V STERLING - LUTH - EXH 46	Email re: Gross Wage 2009-2010 Report	1	SJI_EEOC00191961
04-04-13 JOCK V STERLING - LUTH - EXH 47	Email re: New Employee Merit	1	SJI00683301
04-04-13 JOCK V STERLING - LUTH - EXH 48	Wage Generator Enhancements Release 2.1	1-11	SJI_EEOC00289541-9551
04-04-13 JOCK V STERLING - LUTH - EXH 49	Memo re: Career Advancement Register-FY11 Year-End Summary	1-2	SJI)EEOC00211901-1902
04-04-13 JOCK V STERLING - LUTH - EXH 50	Email re: Career Advancement Registry	1	SJI_EEOC00211956
04-04-13 JOCK V STERLING - LUTH - EXH 51	Email re: Manager-in-Waiting Program FY2008-360 Analysis	1-3	SJI/EEOC00070453-0455
04-04-13 laryssa jock v sterling jewelers - frank luth - confidential - Vol. I	Deposition of Frank William Luth (PTX version)	N/A	N/A
10-25-12 Kochanek	Deposition of Tryna Kochanek	1-298	N/A
10-25-12 Kochanek Condensed	Deposition of Tryna Kochanek (Condensed)	1-100	N/A
10-25-12 KOCHANEK EXH 9	Statement of Standards of Conduct and Business Ethics Policy	1-6	SJI0002380-2385
1035468--2nd Tier Candidates	Internal best practices for ID of 2nd tier professionals	1-3	SJI01035468-470
1036413-16	Field Human Resources Follow-Up Memorandum	1-4	SJI01036413-6416
1041225-35	Field HR Performance Metrics: Quarterly Report	1-11	SJI01041225-1235
1046760--MIW Memo--Kocis to Luth	Memo re: Manager-in-Waiting Program FY2010-360 Analysis	1-2	SJI01046760-4761
10618-10619 Mall Sales Description	Position Description: Sales Mall	1-2	SJI00010618-619
10651-10652	Email regarding starting wages by store	1-2	SJI00010651-652
107659--CAR Reports	CAR Reporting Tool	1-10	SJI00107859-7868
107669--CAR Changes--March 2 2012	Corporate communication re: CAR	1-3	SJI00107869-7871
10885-10886	Wage and Salary Administration Policy	1-2	SJI00010885-886
11-12-12 JOCK V STERLING - LUTH - EXH 1	Organizational Charts	1-9	SJI00001929-1936
11-12-12 JOCK V STERLING - LUTH - EXH 10	Email with questions answered regarding Wage Generator	1	SJI00638282
11-12-12 JOCK V STERLING - LUTH - EXH 11	Wage and Salary Administration	1-2	SJI00010885-886

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11-12-12 JOCK V STERLING - LUTH - EXH 12	Email regarding compensation policies	1-2	SJI00267754-755
11-12-12 JOCK V STERLING - LUTH - EXH 13	Email regarding exceptions to the Wage Generator	1	SJI01035022
11-12-12 JOCK V STERLING - LUTH - EXH 14	Merit Increase Guidelines	1	SJI00000403
11-12-12 JOCK V STERLING - LUTH - EXH 15	Fall 2006 Jared Performance Appraisal Guide	1-8	SJI00000395-402
11-12-12 JOCK V STERLING - LUTH - EXH 16	Fall 2006 Field Performance Appraisal Guide	1-8	SJI00000387-394
11-12-12 JOCK V STERLING - LUTH - EXH 17	Store Performance Appraisal (Laryssa Jock)	1-4	SJI00009332-335
11-12-12 JOCK V STERLING - LUTH - EXH 18	Store Performance Appraisal (Lisa McConnel)	1-4	SJI00009902-905
11-12-12 JOCK V STERLING - LUTH - EXH 19	Jared Performance Appraisal (Judy Reed)	1-3	SJI00009729-731
11-12-12 JOCK V STERLING - LUTH - EXH 2	Email with wage rates for November 2010	1-6	SJI01046211
11-12-12 JOCK V STERLING - LUTH - EXH 20	Commission Structure	1-2	SJI00010606
11-12-12 JOCK V STERLING - LUTH - EXH 21	Mall Store Managers' Bonus Plan	1-4	SJI00030639-641
11-12-12 JOCK V STERLING - LUTH - EXH 22	Memo re: Store Bonus Plan	1-10	SJI00031986-993
11-12-12 JOCK V STERLING - LUTH - EXH 23	Promotion / Transfer Policy	1	SJI00010882
11-12-12 JOCK V STERLING - LUTH - EXH 24	Position Description – Mall Store Manager	1-4	SJI00002079-082
11-12-12 JOCK V STERLING - LUTH - EXH 25	Position Description – Jared General Manager	1-3	SJI00002099-101
11-12-12 JOCK V STERLING - LUTH - EXH 26	Succession Management - District Manager Lesson Plan	1-52	SJI00032416-467
11-12-12 JOCK V STERLING - LUTH - EXH 27	Career Path at Sterling Jewelers Inc.	1	SJI00010610
11-12-12 JOCK V STERLING - LUTH - EXH 28	Career Path at Jared the Galleria of Jewelry	1	SJI00010611
11-12-12 JOCK V STERLING - LUTH - EXH 29	Recommended Manager Change (Tina Withee)	1	SJI00005391
11-12-12 JOCK V STERLING - LUTH - EXH 3	Talking Points for Communications with VPROs	1-2	SJI00712301-302
11-12-12 JOCK V STERLING - LUTH - EXH 30	I.T. Request Form	1-26	SJI00008603-627
11-12-12 JOCK V STERLING - LUTH - EXH 31	Memo regarding new policy for promotional requests	1-3	SJI00008763-65
11-12-12 JOCK V STERLING - LUTH - EXH 32	Sterling's Career Advancement Register (June 2007)	1-18	SJI00008726-743
11-12-12 JOCK V STERLING - LUTH - EXH 33	Sterling's Career Advancement Register (September 2009)	1-19	SJI00008744-762

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11-12-12 JOCK V STERLING - LUTH - EXH 4	Email to DM's regarding minimum wages	1-2	SJI00295223-224
11-12-12 JOCK V STERLING - LUTH - EXH 5	Memo regarding wage rate generator	1	SJI00000467
11-12-12 JOCK V STERLING - LUTH - EXH 6	Starting Wage Rate Generator Field Compensation (PPT Presentation)	1-21	SJI00000477-497
11-12-12 JOCK V STERLING - LUTH - EXH 7	Where to Find Potential Candidates	1	SJI00003862
11-12-12 JOCK V STERLING - LUTH - EXH 8	Module 4 - Recruiting and Succession Planning Participants' Guide	1-40	SJI00028892-931
11-12-12 JOCK V STERLING - LUTH - EXH 9	Email regarding exceptions to the Wage Generator	1	SJI0059635
11-12-12 Luth	Deposition of Frank Luth, Day 1	1-357	N/A
11-12-12 Luth Condensed	Deposition of Frank Luth, Day 1 (condensed)	1-120	N/A
11-13-12 Luth	Deposition of Frank Luth, Day 2	1-265	N/A
11-13-12 Luth Condensed	Deposition of Frank Luth, Day 2 (condensed)	1-89	N/A
112836--BFern to Pbig questioning promo	email questioning a promotion	1-2	SJI000112836-837
1-23-13 Lynch	Deposition of Michael Lynch (Final Version)	1-272	N/A
1-23-13 Lynch Condensed	Deposition of Michael Lynch (Final Version-Condensed)	1-92	N/A
12-4-12 Becker Condensed.pdf.pdf	Deposition of Steven John Becker (condensed)	1-88	N/A
12-4-12 Becker.pdf.pdf	Deposition of Steven John Becker	1-259	N/A
12-4-12 JOCK V STERLING - BECKER - EXH 1.pdf.pdf	Organizational Charts	1-9	SJI00001929-936
12-4-12 JOCK V STERLING - BECKER - EXH 2.pdf.pdf	Field Recruiting: Partnership with Field HR - Discrimination & Harassment complaints	1-5	SJI00469581-469585
12-4-12 JOCK V STERLING - BECKER - EXH 3.pdf.pdf	Employee Relations Procedures Manual	1-92	SJI00470098-188
12-4-12 JOCK V STERLING - BECKER - EXH 4.pdf.pdf	Field Human Resources Follow-Up Memorandum	1-3	SJI01036413-6416
12-4-12 JOCK V STERLING - BECKER - EXH 5.pdf.pdf	Sexual Harassment Policy	1-2	SJI00002859-2860
12-4-12 JOCK V STERLING - BECKER - EXH 6.pdf.pdf	Statement of Standards of Conduct and Business Ethics Policy	1-6	SJI00002380-385
12-4-12 JOCK V STERLING - BECKER - EXH 7.pdf.pdf	Zero Tolerance Policy	1-2	SJI00058781-58752
12-4-12 JOCK V STERLING - BECKER - EXH 8.pdf.pdf	Performance Appraisal for Laryssa Jock	1-4	SJI00009332-9334
12-4-12 JOCK V STERLING - BECKER - EXH 9.pdf.pdf	Sterling Jewelers Stores Satisfaction Survey	1-89	SJI00055987-56075
1241265--Career Aspiration Conversation	Checklist of CAR conversations	1-46	N/A
1606-1607 Jared Sales Description	Position Description: Sales Jared	1-2	SJI0001606-607
1652332_1	JOCK V. STERLING JEWELERS DEPOSITION OUTLINE ON COMPLAINTS AND DIVERSITY	N/A	N/A

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1653281_1	JOCK V. STERLING JEWELERS DISCRIMINATORY BEHAVIORS AND COMMENTS FOR DEPOSITION ON COMPLAINTS AND HR PROCESS	N/A	N/A
182829--Store Closing Book	Your Guide to a Successful Closing	1-26	SJI00182829-2854
187713--HR Basics	The HR Basics - 2008 Holiday Season	1-25	SJI00187713-187737
2079-2082 Mall SM Description	Position Description: Mall Store Manager	1-4	SJI0002079-082
2083-2085 Mall and Jared DM Description	Position Description: District Manager Mall/Jared	1-3	SJI0002083-085
2099-2101 Jared GM Description	Position Description: Jared General Manager	1-3	SJI0002099-101
2120-Personnel Policy Manual	Current Original Personnel Policy Manual as of 5/05	1-408	SJI00002120-2527
2-12-13 Spagnola	Deposition of Joe Spagnola	1-236	N/A
2-12-13 Spagnola Condensed	Deposition of Joe Spagnola (condensed)	1-80	N/A
2-13-13 Berger	Deposition of Robert Berger, full	1-222	N/A
2-13-13 Berger Condensed	Deposition of Robert Berger, condensed (condensed)	1-74	N/A
215129--New Store Opening Guidebook	New Store Opening Guidebook	1-66	SJI00215129-5194
239338--Email re Clarification of Sales Experience	Email re: Clarifications on sales experience	1	SJI00239338
239339--Retail Sales Experience	Does this count as Retail Sales Experience?	1	SJI00239339
239340--WG Clarifications	Wage Generator Clarifications	1	SJI00239340
255035--Build a Brilliant Future	Building a Brilliant Future	1-14	SJI00252042-055
267754--WRG and Budget	Email regarding hiring experienced vs. nonexperienced	1-2	SJI000267754-755
28099-28114 Standards Perf Review Facilitator's Guide	Standards Performance Review: Mall Career Development School – Facilitator's Guide	1-16	SJI00028099-114
28892-28931	Recruiting and Succession Planning – Participant's Guide	1-40	SJI00028892 -931
289808-Team Member Handbook	Team Member Handbook: Field Edition	1-16	SJI00289808-289823
30545-30547	2009 Spring Performance Appraisals and Merit Increases Memo	1-3	SJI00030545-547
3-20-13 Light	Deposition of Mark Light	1-272	N/A
3-20-13 Light Condensed	Deposition of Mark Light (condensed)	1-90	N/A
3-21-13 Menett	Deposition of MaryEllen Menett	1-356	N/A
3-21-13 Menett Condensed	Deposition of MaryEllen Menett (condensed)	1-119	N/A
34126-Performance Management	Lesson Plan	1-18	SJI00034418-4135
34596--Managing Interpersonal Relationships	Managing Interpersonal Relationships: Participant Guide	1-185	SJI00034596-34780
35058--Effective Feedback	Guide on Effective Feedback	1	SJI00035058
35596--DM Development--Facilitation Skills	District Manager Development Program	1-11	SJI00035596-35606
3-8-13 Parks	Deposition of Tom Parks	1-184	N/A
3-8-13 Parks Condensed	Deposition of Tom Parks (condensed)	1-61	N/A

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387-394	Fall 2006 Field Performance Appraisal Guide	1-8	SJI00000387-394
395-402	Fall 2006 Jared Performance Appraisal Guide	1-8	SJI00000395-402
419581--Cover Email-- Behavioral Interview Qs	Email regarding interview questions (no attachment)	1	SJI00419581
419582--Behavioral Interview	Structured Interview packet for management	1-6	SJI00419582-587
419588--Behavioral Interview Sales	Structured Interview packet for sales employees	1-5	SJI00419588-592
4-4-13 Luth	Deposition of Frank William Luth	1-185	N/A
4-4-13 Luth Condensed	Deposition of Frank William Luth (condensed)	1-64	N/A
447-453	Wage Generator Manual	1-7	SJI00000447-453
470098--Emp Relations Procedures Manual	Employee Relations Procedures Manual	SJI00470098-470188	
4792-4793	email questioning a promotion, with attachment	1-2	SJI0004792-4793
56261--DM Candidate Interview Checklist	Interview packets	1-43	SJI00056261-303
56375--DM Candidate Interview Checklist	Interview packets	1-43	SJI00056375-417
63892--Jbeck to Smartz re no promo	email questioning promotion No Title	1	SJI0063892
707910--Recruitment and Selection Training Workshop	Recruitment and Selection Training Workshop	1-19	SJI00707910-928
81130--Bfern to MMCF re no approval for MCF	email regarding no approval for new manager promotion	1	SJI00081130
84-94	Field Performance Appraisal Guide	1-11	SJI00000084 -94
8744-- CAR Status 2009 PP	Sterling's Career Advancement Register	1-19	N/A
Amended Protective Order re Confidential Info June 7, 2012 (2)	Amended Protective Order regarding the Exchange of Confidential Information	1-8	N/A
Berger Ex 4	Wage Rate Generator	1-8	SJI00000440-446
Berger Ex 5	Wage Generator: Wage Override Analysis	1-29	SJI01256256-284
Berger Ex 6	email re: wage generator	1	SJI00733118
Berger Ex 8	HR/Travel Fact Sheet	1-58	SJI_EEOC00288991-289048
CL3.25.13	cover letter from attorneys re: apps received	1	N/A
CL3.26.13	cover letter from attorneys re: apps received	1	N/A
CL-STR 9716-9724 Declaration of Cathy Mantia	Declaration of Cathy Mantia	1-9	CL-STR009716-724
CL-STR 9864-69 Newton	Declaration of Christopher Newton	1-6	CL-STR009864-869
Cohen Millstain Job Applications	cover letter from attorneys dated March 12, 2013	1-2	N/A
Cohen Milstein 3.8.13	cover letter from attorneys dated March 8, 2013	1	N/A
Corres to Joe Sellers from Gerald Maatman, Jr. regarding enclosed cd labeled SJI01279647-01282777	Cover letter re: additional applications	1-2	N/A
Cover Letter 3.26.13	cover letter from attorneys re: training documents	1	N/A
CoverLetter 4.15.13	Cover letter re: additional applications	1-3	N/A

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CoverLetter 4.22.13	Cover letter re: additional applications	1	N/A
CoverLetter 4.8.13	Cover letter re: additional applications	1-3	N/A
DAVID EVERTON_deposition	Deposition of David Everton	N/A	N/A
Excerpts from Berger Deposition	Excerpts from deposition	1-16	N/A
Jared Asst GM Job Description	Position Description - Jared Assistant General Manager	1-3	SJI00008823-8825
Jared Diamond Dept Mgr Job Description	Position Description - Jared Diamond Department Manager	1-3	SJI00001599-1601
Jared Timepiece Dept Mgr Job Description	Position Description - Jared Timepiece Department Manager	1-3	SJI00001611-1613
Jock et al. v. Sterling Jewelers Inc. - Supplemental Information Regarding 2007 ENE Sample		N/A	N/A
john liebler_deposition_final	Deposition of John Liebler	N/A	N/A
KKL confidentiality agreement sterling	Amended Protective Order regarding the Exchange of Confidential Information	1-8	N/A
LARYSSA JOCK V STERLING JEWELERS - ROBERT BERGER - CONFIDENTIAL	Deposition of Robert Berger, rough (TXT version)	N/A	N/A
laryssa jock v sterling jewelers - robert berger - confidential - Vol. I	Deposition of Robert Berger (TIF version)	N/A	N/A
Itr to Maatman re application sampling plan		1	
Maatman 042613 Itr to Smith re outstanding issues	Letter from Sterling attorneys to Claimants' attorneys re: outstanding issues	1-4	N/A
Pltfs 1st Amd Class Action (AAA) Cmplt	Plaintiffs' First Amended Class Arbitration Complaint	1-60	N/A
Resolve Arbitration Agreement	Resolve Arbitration Agreement	1-2	N/A
Respondent's Supp Response to Claimants 2nd set of rogs 13	Wage Rate Generator - Data Dictionary for WRG file	1	N/A
Scan1	Cover Letter dated May 31, 2013	1-2	N/A
SJI 00000084-94	Field Performance Appraisal Guide	1-11	SJI00000084-94
SJI 00000387-94	Fall 2006 Field Performance Appraisal Guide	1-7	SJI00000387-393
SJI 00000403	Merit Increase Guidelines	1	SJI00000403
SJI 00000454-466	Wage Generator (FIS version)	1-13	SJI00000454-466
SJI 00000467	Memo: Wage Rate Generator Reminder	1	SJI00000467
SJI 00002857-8	Sexual Harrassment Code of Conduct	1-2	SJI00002857-858
SJI 00002859-60	Sexual Harrassment Policy	1-2	SJI00002859-860
SJI 00003061-3	Hiring: Field Policy	1-3	SJI00003061
SJI 00003079	Compensation Administration Management Guidelines	1-2	SJI00003079-080
SJI 00003431	Wage Generator (FIS version)	1-13	SJI00003431-443
SJI 00004014-7	Take it Personally, Sterling (TIPS Line)	1-4	SJI00004014-017
SJI 00008763-5	Memo: Promotional Opportunities	1-3	SJI00008763-65

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SJI 00008811-3	Position Description - Mall Assistant Manager	1-3	SJI00008811-813
SJI 00008814-6	Position Description - Mall Store Manager	1-3	SJI00008814-816
SJI 00008829-31	Position Description - District Manager Mall/Jared	1-3	SJI00008829-831
SJI 00010607	Commission Structure	1	SJI00010607
SJI 00010608	Minimum Individual Performance Standards	1	SJI00010608
SJI 00010609	Activity Flow Chart	1	SJI00010609
SJI 00010610-11	Career Path at Sterling Jewelers Inc. and Career Path at Jared the Galleris of Jewelery	1-2	SJI00010610 -611
SJI 00010651	Corporate Communication - New Hire Process	1	SJI00010651
SJI 00010882	Promotion / Transfer Policy	1	SJI00010882
SJI 00010885-6	Wage and Salary Administration Policy	1-2	SJI00010885 -886
SJI 00027369-70	Monthly Report - Diversity Leadership Team	1-2	SJI00027369-370
SJI 00028892-931	Module 4 - Recruiting and Succession Planning Participants' Guide	1-40	SJI00028892-931
SJI 00030545-7	Memo - 2009 Spring Performance Appraisals and Merit Increases	1-3	SJI00030545-547
SJI 00030616-7	Corporate Communication - Colorado Wage Transparency Act	1-2	SJI00030616-617
SJI 00032416-67	Succession Management - District Manager Lesson Plan	1-52	SJI00032416-467
SJI 00036509	ATS Advanced Guide: Leaders Guide	1-120	SJI00036509-36628
SJI 00036629	ATS Advanced Guide: Associate's Workbook	1-168	SJI00036629-36796
SJI 00039025	Jared Associate Training System: New Hire Basics for Success Workbook	1-239	SJI00039025-39263
SJI 00039264	Jared ATS Advanced Guide: Leaders Guide	1-94	SJI00039264-357
SJI 00039592	Jared ATS Advanced Guide: Sales Consultant's Workbook	1-186	SJI00039592-39777
SJI 00039778	Associate Training System: New Hire Basics for Success Workbook	1-214	SJI00039778-39991
SJI 00040109	Associate Training System: Basics for Success Leaders Guide	1-95	SJI00040109-40203
SJI 00040204	Jared Associate Training System: Basics for Success Leader's Guide	1-116	SJI00040204-319
SJI 00052159-64	Career Desires	1-6	SJI00052159-164
SJI 00193968	Wage Generator (PPT presentation)	1-22	SJI00193968-989
SJI 00194044	Wage Generator (PPT presentation with notes)	1-26	SJI00194044-069
SJI 01050678--Summary by VPRO re Complaints	Summary by VPRO of complaints received	N/A	N/A
SJI 01255870_CONFIDENTIAL_New Hire Merit Adjustment Memo	Memo re: New Hire Merit Analysis	1-5	SJI01255870-874
SJI 01255875_CONFIDENTIAL_New Employee Effectiveness 10-31-07	Memo re: New Employee Effectiveness	1-7	SJI01255875-881

Electronic File Name	Document Name or Description	Pages	Bates #
SJI 01255882_CONFIDENTIAL_Final DM Wage present_MS	How to Ge More Payroll Hours - Distric Manager Meeting, June 2005	1-37	SJI01255882-918
SJI 01255921_CONFIDENTIAL_Managing Your Wage Rates for 2008	Managing Your Wage Rates 2008	1-54	SJI01255921-974
SJI 01260076 through SJI01261007	Sterling Jewelers Employment Application Packets Set 1 (305 applicants)	1-1000	SJI01260076-1077
SJI 01283672_CONFIDENTIAL_Sterling - Population for Application Sample	Spreadsheet of ENE applicant names mapped to employee IDs	N/A	SJI01283672
SJI 01284557_CONFIDENTIAL_AEO_Sterling - Job Application Names and Employee IDs	Spreadsheet of applicants names mapped to employee IDs	N/A	SJI01284557
SJI 01285225.xlsx	Demographic info for Spring 2008	N/A	SJI01285225
SJI 01285226.xlsx	Demographic info for Fall 2008	N/A	SJI01285226
SJI 01285423_CONFIDENTIAL_AEO_Sterling - Job Application Names and Employee IDs	Spreadsheet of candidate names and employee IDs	N/A	SJI01285423
SJI 01285425_CONFIDENTIAL_AEO_2009 Data		N/A	SJI01285425
SJI 01285426_CONFIDENTIAL_AEO_lang_+b	Supplemental Job Application	1-4	SJI01285426-5429
SJI 01285430_CONFIDENTIAL_AEO_rodgers_+p	Supplemental Job Application	1-4	SJI01285430-5433
SJI 01285434_CONFIDENTIAL_AEO_wallace_+t	Supplemental Job Application	1-4	SJI01285434-5437
SJI 01287029-SJI 01287151	Supplemental ENE job applications	N/A	SJI 01287029-SJI 01287151
SJI 01287152-SJI 01287204	Supplemental ENE job applications	N/A	SJI 01287152-SJI 01287204
SJI 01287205-SJI 01287220	Supplemental ENE job applications	N/A	SJI 01287205-SJI 01287220
SJI 286305 (Lynch ex 13) Email re Liability Arising from Not Using CAR	Email re: liabilities connected with compensation decisions	1	SJI00286305
SJI001.dat	Applicant Data	N/A	N/A
SJI001.lfp	Applicant Data	N/A	N/A
SJI001.opt	Applicant Data	N/A	N/A
SJI002.dat	Applicant Data	N/A	N/A
SJI002.lfp	Applicant Data	N/A	N/A

Electronic File Name	Document Name or Description	Pages	Bates #
SJI002.opt	Applicant Data	N/A	N/A
SJI003.dat	Applicant Data	N/A	N/A
SJI003.lfp	Applicant Data	N/A	N/A
SJI003.opt	Applicant Data	N/A	N/A
SJI00322134_CONFIDENTIAL_A EO_Starting.Wage.Generator.FI S.Phase2.1.xls	Excel workbook with Wage Generator information	N/A	SJI00322134
SJI01255858_CONFIDENTIAL_A EO_60-20 JaredSales Goals	Setting Sales Goals- Jared	1-5	SJI01255858-862
SJI01255863_CONFIDENTIAL_A EO_60-20 MallSales Goals.pdf.pdf	Setting Sales Goals - Mall	1-4	SJI01255863-866
SJI01255875_CONFIDENTIAL_N ew Employee Effectiveness 10- 31-07	Memo re: New Employee effectiveness	1-7	SJI01255875-881
SJI01256256_CONFIDENTIAL_A EO_Wage Generator Wage Override Analysis	Wage Generator: Wage Override Analysis	1-29	SJI01256256-284
SJI01261078 through SJI01261766	Sterling Jewelers Employment Application Packets Set 2 (226 applicants)	1-689	SJI01261078-1766
SJI01261769 through SJI01264379	Set of Job Applications	N/A	SJI01261769-4379
SJI01264633 through SJI01266484	Set of Job Applications	N/A	SJI01264633-6484
SJI01266490 through SJI01266962	Set of Job Applications	N/A	SJI01266490-6962
SJI01266964 through SJI01268043	Set of Job Applications	N/A	SJI01266964-8043
SJI01268045 through SJI01268128	Set of Job Applications	N/A	SJI01268045-8128
SJI01268685 through SJI01269808	Set of Job Applications	N/A	SJI01268685-9808
SJI01279647-SJI01282055	Set of Job Applications	N/A	SJI01279647- SJI01282055
SJI01282056-SJI01282777	Set of Job Applications	N/A	SJI01282056- SJI01282777
SJI01282778-SJI01283218	Set of Job Applications	N/A	SJI01282778- SJI01283218
SJI01283219-SJI01283447	Set of Job Applications	N/A	SJI01283219- SJI01283447
SJI01283449-SJI01283671	Set of Job Applications	N/A	SJI01283449- SJI01283671
SJI01283673-SJI01284556	Set of Job Applications	N/A	SJI01283673- SJI01284556
SJI01284558-SJI01284707	Set of Job Applications	N/A	N/A
SJI01284708-SJI01284800	Set of Job Applications	N/A	N/A
STER-06380	Applications from Early Neutral Evaluation	1-1346	STER-6380-7724
STER-07725	Applications from Early Neutral Evaluation	1-1207	STER-6381-8927

Electronic File Name	Document Name or Description	Pages	Bates #
STER-08928	Applications from Early Neutral Evaluation	1-984	STER-8928-9911
STER-09912	Applications from Early Neutral Evaluation	1-594	STER-0092-10505
STER-10506	Applications from Early Neutral Evaluation	1-273	STER-10506-10778
STER-3350	Applications from Early Neutral Evaluation	1-614	STER-3350-3963
STER-3964	Applications from Early Neutral Evaluation	1-431	STER-3964-4394
STER-4395	Applications from Early Neutral Evaluation	1-302	STER-4395-4696
STER-4697	Applications from Early Neutral Evaluation	1-231	STER-4697-4927
STER-4928	Applications from Early Neutral Evaluation	1-176	STER-4928-5103
STER-5104	Applications from Early Neutral Evaluation	1-569	STER-5104-5672
STER-5673	Applications from Early Neutral Evaluation	1-457	STER-5673-6129
STER-6130	Applications from Early Neutral Evaluation	1-250	STER-6130-6379
Sterling - Ballou, Heather - original and supplemental decs_	Declaration of Heather Ballou	1-12	CL-STR008566-573
Sterling - Christy, Anthony	Declaration of Anthony Christy	1-4	CL-STR009366-339
Sterling - Clemens, Jennifer	Declaration of Jennifer Clemens	1-6	CL-STR009343-348
Sterling - Contreras, Kelly	Declaration of Kelly Contreras	1-4	N/A
Sterling - Converse, Sarah - original and supplemental_1	Declaration of Sarah Converse and Supplemental Declaration of Sarah Converse	1-8	CL-STR009349-CL-STR009350
Sterling - DeMarco, Veronica - original and supplemental_1	Declaration of Veronica Delmarco and Supplemental Declaration of Veronica Delmarco	1-10	CL-STR008688-691 AND CL-STR009390-395
Sterling - Douglas, Sanya - original and supplemental_1	Declaration of Sanya Douglas and Supplemental Declaration of Sanya Douglas	1-9	CL-STR008714-720 AND CL-STR009357-358
Sterling - Eagle, Gerald	Declaration of Gerald Eagle	1-3	CL-STR009377-379
Sterling - Goldberg, Stacey - original and supplemental_1	Declaration of Stacey Goldberg and Supplemental Declaration of Stacey Goldberg	1-8	CL-STR009316-320
Sterling - Jones, Chris	Declaration of Chris Jones	1-5	CL-STR009275-279
Sterling - Kabbas, Joe	Declaration of Joe Kabbas	1-5	N/A
Sterling - Looney, Kathleen - original and supplemental_1	Declaration of Kathleen Looney and Supplemental Declaration of Kathleen Looney	1-6	CL-STR008814 -816
Sterling - Seiger, Melissa	Declaration of Melissa Seiger	1-4	CL-STR009364-367
Sterling - Small, Melinda	Declaration of Melinda Small	1-10	CL-STR008924-933
Sterling - Sumen declaration	Declaration of Richard Sumen	1-6	CL-STR008949-954
Sterling - Szlag, Daniel	Declaration of Daniel Szlag	1-4	CL-STR008955-958
Sterling - Tumlin, Betty - original and supplemental_1	Declaration of Betty Tumlin and Supplemental Declaration of Betty Tumlin	1-7	CL-STR008978 -981
Tom Parks draft, 3-8-13	Rough Draft Transcript Deposition of Tom Parks	N/A	N/A
SJI 10477-79	Jared Performance Appraisal Sales, 2008		
SJI 310186-88	Mall Performance Appraisal Sales, 1997		
SJI 34118	Performance Management, Sterling Training Documents		
SJI 1255984	Hewitt- Compensation Competitiveness		
SJI 1256017	Hewitt- Incentive Program Assessment		
doc # 1709176	Letter from SS to Maatman re application sampling plan, 12/11/12		

Electronic File Name	Document Name or Description	Pages	Bates #
doc # 1709177	Email re application sampling between KK and GM, 1/14/13-1/17/13		
SJI 1622-23	Mall Sales Support		
SJI 1604-05	Jared Sales Support		
SJI 1254416	WRG used incorrectly		
SJI 1261767-1264632	Job Applications (Production 3/8/13) – 732 additional job apps		
SJI 00003061-3063			
SJI 310186-88	Mall Performance Appraisal Sales, 2000		
SJI 01285302 - SJI 01285424			
SJI 4362	Manager Change Forms		
SJI 00051539-51540			
VOL001.dat	Job Application Data	N/A	N/A
VOL001.lfp	Job Application Data	N/A	N/A
VOL001.opt	Job Application Data	N/A	N/A
VOL002.dat	Job Application Data	N/A	N/A
VOL002.lfp	Job Application Data	N/A	N/A
VOL002.opt	Job Application Data	N/A	N/A
VOL003.dat	Job Application Data	N/A	N/A
VOL003.lfp	Job Application Data	N/A	N/A
VOL003.opt	Job Application Data	N/A	N/A
VOL004.dat	Job Application Data	N/A	N/A
VOL004.lfp	Job Application Data	N/A	N/A
VOL004.opt	Job Application Data	N/A	N/A
VOL005.dat	Job Application Data	N/A	N/A
VOL005.lfp	Job Application Data	N/A	N/A
VOL005.opt	Job Application Data	N/A	N/A
VOL006.dat	Job Application Data	N/A	N/A
VOL006.lfp	Job Application Data	N/A	N/A
VOL006.opt	Job Application Data	N/A	N/A
VOL007.dat	Job Application Data	N/A	N/A
VOL007.lfp	Job Application Data	N/A	N/A
VOL007.opt	Job Application Data	N/A	N/A
VOL008.dat	Job Application Data	N/A	N/A
VOL008.lfp	Job Application Data	N/A	N/A
VOL008.opt	Job Application Data	N/A	N/A
VOL009.dat	Job Application Data	N/A	N/A
VOL009.lfp	Job Application Data	N/A	N/A
VOL009.opt	Job Application Data	N/A	N/A
VOL010.dat	Job Application Data	N/A	N/A
VOL010.lfp	Job Application Data	N/A	N/A
VOL010.opt	Job Application Data	N/A	N/A
VOL011.dat	Job Application Data	N/A	N/A
VOL011.lfp	Job Application Data	N/A	N/A
VOL011.opt	Job Application Data	N/A	N/A
VOL012.dat	Job Application Data	N/A	N/A
VOL012.lfp	Job Application Data	N/A	N/A

<i>Electronic File Name</i>	<i>Document Name or Description</i>	<i>Pages</i>	<i>Bates #</i>
VOL012.opt	Job Application Data	N/A	N/A
VOL013.dat	Job Application Data	N/A	N/A
VOL013.lfp	Job Application Data	N/A	N/A
VOL013.opt	Job Application Data	N/A	N/A
VOL014.dat	Job Application Data	N/A	N/A
VOL014.lfp	Job Application Data	N/A	N/A
VOL014.opt	Job Application Data	N/A	N/A
VOL015.dat	Job Application Data	N/A	N/A
VOL015.lfp	Job Application Data	N/A	N/A
VOL015.opt	Job Application Data	N/A	N/A
WRG SJI 01256255	Excel spreadsheet of applicant data	N/A	N/A

ATTACHMENT C

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ATTACHMENT D

Application Coding Sheet

Coder & Applicant Background Information		Applicant 1	
Coder Name (Last, First)			
Today's Date (MM/DD/YY)			
Beginning Bates Number			
Ending Bates Number			
Applicant Last Name			
Applicant SSN (999=Missing)			
Position Applying for (1=Sales; 2=Manager; 3=Both; 4=Other Role; 5=Any Available; 999=Missing)			
Date of Application (MM/DD/YY; 999=Missing)			
Resume Attached (0=No; 1=Yes)			
Other Supporting Documentation Attached (0=No; 1=Yes)			
Specialized Training and Certification		Coding (0=No; 1=Yes)	
None			
Jewelry (e.g., GIA gemologist training, DCA diamond course, jewelry design school, college degree in jewelry)			
Specify the jewelry training or certification			
Sales (e.g., High Impact Selling course; Win-Win Problem Solving certificate)			
Customer service (e.g., customer service certificate from community college)			
Employment History - Part 1		Coding (0=No; 1=Yes)	Time (999=Missing)
Jewelry			
Sales Experience - Retail			
Store Manager Experience			
Other Management Experience			
Non-jewelry			
Sales Experience - Retail			
Store Manager Experience			
Other Management Experience			

Application Coding Sheet

Employment History - Part 2	Coding (0=No; 1=Yes)	Time (999=Missing)	
		Years	Months
Sales			
None			
Transactional - Processing payments in exchange for goods or services; may involve some sharing of information with customers as secondary responsibilities, or the sale process largely involves retrieval of information or goods (e.g., retail cashier, hotel desk clerk)			
Passive Selling - Shares product/service knowledge with customers to assist with potential sales; has some potential to sway customer, though the scope of influence is generally limited (e.g., electronics sales associate, phone sales associate, department store salesperson, boutique salesperson)			
Sales Support - Supports active selling; sales responsibilities are secondary to the primary job function; shares product/service knowledge and selling techniques with subordinates to facilitate potential sales (e.g., new car sales manager)			
Active Selling - Indirect - Actively seeks sales through the phone or other indirect means; provides a wide range of products or services, where the range of prices may vary greatly; has larger potential to sway customer decisions (e.g., telemarketer, wholesale sales associate)			
Active Selling - Direct - Actively seeks sales through face-to-face interaction, or a mixture of indirect and face-face-interaction where high relationship development with the customer is expected; provides a wide range of products or services, where the range of prices may vary greatly; has larger potential to sway customer decisions (e.g., jewelry sales associate, auto sales associate, account executive, door-to-door salesperson, self-employed business owner)			
Ambiguous Sales Type			
Specify reason for selecting "Ambiguous Sales Type"			
Non Sales Customer Service			
None			
Working with Public - Works directly with the public; assists others but the setting is not traditionally considered customer service (e.g., security guard, teacher, counselor, recruiter)			
Secondary Customer Service Duties - Customer service responsibilities are secondary to the job; assists customers or addresses customer complaints as part of a larger role (e.g., office assistant; home equipment installation technician)			
Primary Customer Service Duties - Indirect - Customer service responsibilities are primary to the job, where service is provided over the phone or other indirect means; assisting customers and resolving customer issues are fundamental elements of the job (e.g., technical support specialist, phone customer service manager)			
Primary Customer Service Duties - Direct - Customer service responsibilities are primary to the job, where service is provided through face-to-face interaction or a mixture of indirect and face-to-face interaction; assisting customers and resolving customer issues are fundamental elements of the job (e.g., restaurant server, host, medical receptionist)			
Ambiguous Customer Service Type			
Specify reason for selecting "Ambiguous Customer Service Type"			

Application Coding Sheet

Additional Information	Coding		
Number of jobs listed			
Number of jobs with insufficient information to make coding judgments			
	# of Jobs	Time (999=Missing)	
		Years	Months
Number of non-sales jobs in the jewelry industry requiring product knowledge (e.g., jewelry repair associate, jewelry designer)			

Exhibit 216

REBUTTAL EXPERT REPORT OF DR. KATHLEEN K. LUNDQUIST

in

Laryssa Jock, et al. v. Sterling Jewelers Inc.
(AAA Case No. 11 160 00655 08)

Equal Employment Opportunity Commission v. Sterling Jewelers Inc.
(W.D.N.Y. Case No. 08-CV-0706 (A)(M))

January 13, 2014

APTMetrics, Inc.
One Thorndal Circle
Darien, CT 06820
(203) 655-7779

REBUTTAL EXPERT REPORT OF DR. KATHLEEN K. LUNDQUIST
in
Laryssa Jock, et al. v. Sterling Jewelers Inc.
Equal Employment Opportunity Commission v. Sterling Jewelers Inc.

This report has been prepared in response to the arguments raised in the reports of Sterling’s experts, Drs. Eric Dunleavy & Kayo Sady¹; Dr. Margaret Stockdale, and Dr. Michael Ward, all retained by Sterling Jewelers in the cases of *Jock, et al. v. Sterling Jewelers Inc.* (AAA Case No. 11 160 00655 08) and *Equal Employment Opportunity Commission v. Sterling Jewelers Inc.* (W.D.N.Y. Case 08-CV-0706 (A)(M)).

EXECUTIVE SUMMARY

This case concerns the policies, procedures and decision-making processes relevant to **compensation** and **promotion** decisions at Sterling Jewelers from January 2003 through the present time frame. Sterling’s experts fail to address and/or rebut many of my criticisms of the reliability and validity of the compensation and promotion processes at Sterling over the relevant time period. Taken together, none of Sterling’s experts is expressing an opinion about the validity of the promotion process, the validity of the pre-WRG compensation process or the reliability of the inputs to the WRG.

Moreover, their claims for the validity and reliability of the processes they do address are flawed. In his report, Dr. Dunleavy asserts an argument that the WRG process is “unequivocally” valid (Dunleavy Report, p. 19), largely based on correlations run by Dr.

¹ Although their report is co-authored, only Dr. Dunleavy was deposed under oath and counsel for Sterling has provided correspondence (Maatman letter to Sellers, December 28,2013) indicating that, “...if deposed, Dr. Sady would not provide any additional opinions or materially different responses than Dr. Dunleavy to the questions posed to Dr. Dunleavy during his deposition”. For ease of reference, we will refer only to Dr. Dunleavy for the remainder of this report.

Ward. The requirements for reaching a conclusion of validity far exceed the limited evidence cited by Dr. Dunleavy for this statement. Dr. Dunleavy is unable to support his conclusion with such basic evidence as job analyses or a rationale for the experience variables used to predict job performance. Dr. Dunleavy cites the correlations of Dr. Ward for evidence of “validity” without meeting the basic requirements for research and documentation of validity evidence. Failing an understanding of the underlying rationale for the predictors, the appropriateness of the criterion, and the accuracy with which they are measured, the resulting statistical correlations are without a framework for meaningful interpretation.

Dr. Ward’s correlation on which Dr. Dunleavy relies are not properly controlled to minimize the effect of contaminating variables. When the regressions were re-run using a control for store sales volume, the most predictive measure of pre-hire job experience in the WRG was sales volume. Additional experience factors which contribute to setting starting salaries for new hires at Sterling show significant gender differences and would disproportionately credit men for experience which is not predictive of success on the job.

Importantly, any statistical analysis claiming to support the validity of the WRG is meaningless and/or uninterpretable if none of the experts can testify as to the consistency and reliability of the information entered into the WRG. In their reports, Sterling’s experts portray Sterling’s processes as “formulaic” and “objective”, apparently without any investigation of their actual use (Dunleavy Report, p. 3; Stockdale Deposition, p. 104; Stockdale Report, p. 24; Ward Deposition, p. 139). However, my examination of the deposition testimony, documents and data in this case found that the descriptions of

Sterling's processes offered by the company's experts are not consistent with their actual use. The number of exceptions and inconsistencies in the implementation of Sterling's WRG process undoubtedly compromised the accuracy and job-relatedness of the company's starting pay decisions.

Sterling's experts have limited relevant experience and reviewed only limited information to form their professional opinions. Sterling's experts offered opinions beyond their areas of expertise, and relied on each other's work, building on assumptions that they did not independently or critically evaluate.

As a result, it remains my professional opinion that the promotion and compensation decisions made for the retail sales and management jobs at Sterling lack sufficient reliability and validity to be considered job-related. Moreover, the lack of consistency and structure permitted measurement error to occur, including intentional or unintentional biases. Additionally, barriers to the advancement and equitable compensation of female employees increased the likelihood of gender discrimination in promotion and compensation at Sterling.

Information Reviewed for this Report

A listing of additional documents I reviewed to form my opinions for this report are contained in Attachment A. (The documents I reviewed in preparation for my original report in this matter were included as Attachment A to the Lundquist 6/21/13 report). In preparing this report, I reviewed the expert reports of Drs. Dunleavy & Sady, Dr. Stockdale, and Dr. Ward, along with their sworn deposition testimony in this case. In addition, I

conducted independent analyses of the underlying data produced by Dr. Ward to examine the statistical findings reported by Dr. Ward.

A list of relevant scientific and professional articles reviewed in connection with this report is included in Attachment B.

STERLING'S EXPERTS FAILED TO ADDRESS OR REBUT MANY OF MY OPINIONS

At issue in this case are claims alleging gender discrimination in **compensation** and **promotion** for retail store employees at Sterling Jewelers from January 2003 through the present time frame. Given the evidence that there are statistically significant gender differences in compensation and promotion in the retail sales associate jobs at Sterling (Ward Report, Table 7), the questions of validity² (i.e., job relatedness) and reliability³ are central to assessing gender discrimination.

In my original report (6/21/13), I reached conclusions regarding the validity and reliability of the compensation and promotion decisions at Sterling during the relevant time period. Specifically, I found that:

- Sterling has not demonstrated the job relatedness of the factors it considered in setting starting salaries that resulted in pay discrepancies between men and women at the time of hire, which continued over the course of their employment (Lundquist Report, p. 3).
- Sterling has not demonstrated the job-relatedness of the factors it considered in making promotion decisions, which resulted in women receiving proportionally fewer promotions (Lundquist Report, p. 3).

² As noted in my original report (Lundquist report, 6/21/13), selection procedures (such as compensation and promotion decisions) must be validated if they have adverse impact when used as a basis for any employment decision, according to the federal *Uniform Guidelines on Employee Selection Procedures* (EEOC *et al.*, 1978), a standard echoed by Dr. Dunleavy in his professional writings (Dunleavy Exhibit 18).

³ As acknowledged by Drs. Dunleavy (Dunleavy Report, p. 20) and Stockdale (Stockdale Deposition, p. 154), reliability is a necessary pre-condition to validity.

- Sterling’s processes were executed in a manner that was unstructured and inconsistent, leading to unreliable and inconsistent evaluation of candidates. Managers were permitted to make decisions about compensation and promotion with insufficient guidance, ambiguous criteria, and without adequate oversight and monitoring to ensure the fairness of the decision making process (Lundquist Report, p. 3).

In their reports and deposition testimony, Sterling’s experts variously fail to express opinions concerning the specific procedures (compensation or promotion) and much of the relevant timeframe from 2003 forward. The limitations on their opinions include:

- Dr. Dunleavy’s report is limited to the issue of compensation, and specifically to the Wage Rate Generator (WRG). He fails to address starting pay prior to the WRG period, i.e., for the time period from 2003 to 2009 (Dunleavy Deposition, pp. 22-23) and does not address merit increases for the entire time period (Dunleavy Deposition, pp. 38-39);
- Dr. Dunleavy’s report does not address the promotion process at all (Dunleavy Deposition, p. 23) and he offers no opinions concerning the promotion process (Dunleavy Deposition, p. 23);
- In contrast with his report, Dr. Dunleavy testified that he did not examine and has no opinion about whether the actual compensation practices (i.e., the information gathered and entered into the Wage Rate Generator) were executed in a reliable or consistent manner (Dunleavy Deposition, pp. 127-129);
- Dr. Dunleavy did not address adverse impact or a search for less adverse alternatives to the WRG (“because we were not asked to do so” (Dunleavy

Deposition, pp. 140, 148)), despite acknowledging that the *Uniform Guidelines* requires the employer to do so (Dunleavy Deposition, pp. 143-147);

- Dr. Stockdale testified that she has no opinion about the validity of the other Sterling expert reports (Stockdale Deposition, p. 39) and that validation studies are not relevant to the opinions she is offering in this case (Stockdale Deposition, p. 35);
- Dr. Stockdale testified that assessing the reliability of the information input to the Wage Rate Generator was outside the scope of her assignment (Stockdale Deposition, p. 156);
- Dr. Stockdale testified that assessing the adequacy or effectiveness of the HR and sexual harassment training was outside the scope of her assignment (Stockdale Deposition, p. 159);
- Dr. Ward testified that he is not offering opinions about the factors that result in gender differences in pay prior to the WRG period; i.e., from 2003 until 2009 (Ward Deposition, p. 238). Dr. Ward testified that he was never asked to conduct a validation study (Ward Deposition, p. 19) and specifically indicates in his report that he is not addressing validity issues (Ward Report, p. 9), and
- Dr. Ward testified that he did not study how managers code the inputs to the Wage Rate Generator (Ward Deposition, pp. 104-105).

Taken together, none of Sterling's experts is expressing an opinion about the validity of the promotion process, the validity of the pre-WRG compensation process or the reliability of the inputs to the WRG.

Moreover, any statistical analysis claiming to support the validity of the WRG is meaningless and/or uninterpretable if none of the experts can testify as to the consistency and reliability of the information entered into the WRG.

VALIDITY OF THE WRG

In his report, Dr. Dunleavy asserts an argument that the WRG process is “unequivocally” valid (Dunleavy Report, p. 19), largely based on correlations run by Dr. Ward. The requirements for reaching a conclusion of validity far exceed the limited evidence cited by Dr. Dunleavy for this statement.

Validation is an empirical process for establishing the job relatedness of a selection procedure, i.e., whether it provides meaningful information to predict job performance. As explained in the *SIOP Principles*⁴, “Validity is the most important consideration in developing and evaluating selection procedures” (2003, p. 4).

The Professional Requirements for Establishing Validity

According to professional standards, a conclusion of validity is to be reached based on the accumulation of evidence to support job relatedness. Such a conclusion is further expected to meet the research and documentation standards articulated in professional standards and legal guidelines for establishing validity.

Any claim of validity made for a selection procedure should be **documented with appropriate research evidence** built on the principles discussed in this document. (*SIOP Principles*, 2003, p.4, **emphasis** added).

Such documentation includes, among other things, a description of a job analysis, and the rationale for the selection of both predictors and criterion measures.

⁴ Professional and legal standards provide a framework for how federal agencies (and often courts) determine the proper use and job relatedness of selection procedures, including: the *Principles for the Validation and Use of Employee Selection Procedures* (2003) authored by the Society for Industrial and Organizational Psychology (“SIOP Principles”); the *Standards for Educational and Psychological Tests* (1999) published by the American Psychological Association et al. (“APA Standards”); and the federal *Uniform Guidelines on Employee Selection Procedures* (“Uniform Guidelines;” EEOC et al., 1978). These professional standards and legal guidelines were endorsed by Dr. Dunleavy in his deposition (67-69) and in his report (p. 26).

- ***Job Analysis and the Development of the WRG***

In his report, Dr. Dunleavy repeatedly concedes that there was no formal job analysis done by Sterling to support the WRG (pp. 23, 24 and 39), and proceeds to argue that the process “was not absent relevant information” (p. 23). Dr. Dunleavy is clearly arguing that some informal gathering of information should qualify as the job analysis, but his deposition testimony reveals he knows little about even the informal process that was supposedly used to create the WRG, beyond the information in a slide deck. He does not know (and did not inquire) whether members of the Task Force who developed the WRG met professional standards for subject matter experts as set forth in the *SIOP Principles* (Dunleavy Deposition, pp. 104-105); does not know anything about the calculations or process used by the Task Force during the development period (Dunleavy Deposition, pp. 108-109, 113), and does not know how the developers identified what experience would be measured or how it would be weighted (Dunleavy Deposition, p. 117).

Dr. Dunleavy admits the value of a job analysis, but then goes on to define a new standard for evaluation of the process:

Although a more formal and stringently documented job analysis would have provided useful information about personal characteristics (likely including experience factors) related to sales productivity, absence of such an analysis **does not guarantee that the HR process is job-unrelated, arbitrary, or unreliable.** (Dunleavy Report, p. 23, emphasis added)

This is not the standard for establishing validity articulated within professional standards or the *Uniform Guidelines*. It is the employer’s obligation to show

affirmatively the job relatedness of its procedures, not merely to argue the opposite -- that there is less than 100% certainty that the process is not valid.

- ***Rationale for the Selection of Predictors of Job Performance***

Reaching a conclusion of validity based on correlating a selection procedure with a measure of job performance (as Dr. Dunleavy purports to do in citing Dr. Ward's correlations between previous experience and annualized sales) requires that the researcher specify a rationale for the choice of predictors. As noted in the *SIOB Principles*:

Variables chosen as predictors should have an empirical, logical, or theoretical foundation. The rationale for a choice of predictor(s) should be specified. A predictor is more likely to provide evidence of validity if there is good reason or theory to suppose that a relationship exists between it and the behavior it is designed to predict. (p. 17)

Dr. Dunleavy admits that he did not see any rationale for the predictors (i.e., the specific measures of previous experience) or for their weighting in the WRG articulated either by Sterling or by Dr. Ward, who was simply running statistics on the predictors chosen by Sterling (Dunleavy Deposition, pp. 163-164).

While Dr. Dunleavy cites literature to attempt to provide a rationale for using managerial experience to predict success in a sales job, the literature he cites discusses broad personality variables such as Conscientiousness and Extraversion⁵ (not measured by Sterling and applicable to hundreds of jobs with

⁵ In fact, the more recent of the two studies he cites (Barrick, Mount & Judge, 2001) contradicts the statement in his report that Extraversion is a stable predictor of success in both Managerial and Sales jobs. The study

widely differing requirements), rather than on years of experience and sales volume which are measured by the WRG. His O*NET⁶ comparison is plagued with the same limitation, i.e., he claims that because managerial and sales jobs share some of the same very broad knowledges, skills and abilities, assessing managerial experience for sales jobs is justified. Included in his comparison is that both jobs require such things as Near Vision, Speaking, and Knowledge of the English Language. In fact, Dr. Dunleavy acknowledges the limitations of the O*NET data he cites:

However, it is important to note limitations of the O*NET to allow appropriate interpretation of conclusions based on the O*NET data. Although the O*NET can be useful for informing on job analysis questions broadly, it does not necessarily map on to specific jobs at specific locations (Dunleavy Report, p. 15).

He nonetheless analyzes the O*NET data and concludes:

Thus, assigning additional credit for starting pay to those with managerial experience is not unreasonable based on the apparent job-relatedness of such experience, **assuming it is reasonable to make statements about Sterling-specific jobs based on O*NET data** (Dunleavy Report, p. 16, **emphasis added**).

The weakness of Dr. Dunleavy's opinion is underscored by his admission that he did not attempt to review the Sterling job descriptions for the Sales Associate and Manager jobs, the key positions in this case, to verify this conclusion.

actually found that the accumulated research showed Extraversion was NOT a stable predictor for Sales jobs (p. 19). Both studies found that Conscientiousness applied to ALL jobs and hence provides no more justification for the similarity between Sales and Managerial jobs than between Sales and Accounting jobs or Sales and Secretarial jobs.

⁶ O*NET is an extensive national database of occupational information about thousands of jobs.

The generality of the information in O*NET which Dr. Dunleavy analyzes to show the similarity of Retail Sales and Manager jobs is further illustrated by a recently published research project (Allen et al., 2012) commissioned by O*NET which compares the requirements of various jobs to assist individuals seeking to make a career change. The research provides a list of jobs with skills and experience similar to that of the individual's current job based on an algorithm that considered the jobs' Knowledge, Skills, Work Activities, Work Context, and Job Zone (i.e., job preparation). The job of Retail Salesperson (the closest O*NET match to Sterling's Sales Associate position) was found to be related to 27 different O*NET jobs for career changers. These related jobs include the First Line Supervisors of Retail Sales Workers which Dr. Dunleavy reviewed, as well as Funeral Attendants, Floral Designers, Concierges, Tour Guides and Escorts, and Demonstrators and Product Promoters. If we apply Dr. Dunleavy's logic regarding the relationship between Sales and Managerial jobs to the relationship between Sales and Floral Designer jobs, or Sales and Funeral Attendant jobs, we would have to reach the extraordinary conclusion that crediting Floral Designer or Funeral Attendant experience in the WRG would be justified because the jobs share similar very general knowledge and skills.

- ***Rationale for the Selection of Criteria to Measure Job Performance***

A careful evaluation of and rationale for how job performance is measured (i.e., the criterion measure) in the correlation study is also required.

As the SIOP *Principles* state:

Criteria should be chosen on the basis of work relevance, freedom from contamination, and reliability rather than availability (SIOB *Principles*, p. 16).

All criteria should be representative of important work behaviors, outcomes, or relevant organizational expectations regarding individual employee behavior or team performance (SIOB *Principles*, p. 43).

Dr. Dunleavy simply relied upon the “average annualized sales” numbers used by Dr. Ward in his correlations without providing any input to the measurement process or independently verifying the accuracy or adequacy of this criterion measure for the job. As discussed below, such a measure is not sufficiently controlled to produce a meaningful analysis of the relationship between predictor and criterion.

In sum, Dr. Dunleavy cites the correlations of Dr. Ward for evidence of “validity” without meeting the basic requirements for research and documentation of validity evidence. Failing an understanding of the underlying rationale for the predictors, the appropriateness of the criterion, and the accuracy with which they are measured, the resulting statistical correlations are without a framework for meaningful interpretation.

The Criterion Measure Used by Dr. Ward is Flawed

Even if one were to evaluate the correlations of Dr. Ward as some evidence of job relatedness, his analysis fails to control for the influence of important explanatory variables that impact the relationship between previous work experience and sales productivity, rendering his findings inaccurate as a measure of job-relatedness.

- ***Appropriateness of Performance Measure***

A criterion-related validation study requires identifying and using an appropriate measure of job performance. In examining the relationship between previous experience and job performance as a Sales Associate at Sterling, Dr. Ward relied on a measure of performance described as the employee's average annualized sales. This was computed by "summing jewelry sales during the relevant period and dividing by the number of hours worked in the period. This average hourly amount is then multiplied by 2,080 to arrive at an annualized figure" (Ward Report, p. A1-12).

The employee's average annualized sales is intended to be a measure of job performance for Sales Associates. However, Dr. Ward's measure is not an appropriate measure of sales performance because it fails to control for critical contaminating factors that impact the employee's ability to perform the job, i.e., the opportunity to sell. As Dr. Ward noted in his report, factors completely outside the control of the employee, such as the economic environment of the store or competition from other stores or local market factors, can impact the opportunity to sell (Ward Deposition, pp. 107-109). In essence, these factors can change the employee's job performance and therefore impact the measurement of a relationship between previous experience and job performance. Hence, failure to control for the effect of these factors renders any statistical analysis of the correlation between previous experience and sales performance uninterpretable and certainly not acceptable evidence of validity.

- ***Controlling for Store Volume***

One important way to control for these contaminating factors is to consider the annual volume of sales achieved by the store. Stores vary in the amount of sales they generate. An employee from a high volume store has the opportunity to have higher sales than someone of equal sales ability who works in a low volume store due to such factors as the economic environment of the store, local employment conditions, or competition from other jewelry stores (Ward Report, p. 26; Ward Deposition, pp. 106-108). The volume of the store also has an impact on the sales goals that are expected of an employee, against which Sterling measures employee performance (Ward Report, pp. A1-9 - A1-10). The WRG takes expected sales into account in setting a recommended pay rate (Luth Deposition 11/12/2012, pp. 183, 189-190). Thus, performance expectations are different across stores with higher or lower sales volumes. Dr. Ward failed to control for store volume when analyzing the relationship between experience and performance. All else being equal, Dr. Ward would consider an employee who sells \$100,000 in a small volume store to be identical in sales performance to an employee who sells the same amount in a large volume store (Ward Deposition, p. 130-131).

Without consideration of store volume, at the very least, Dr. Ward's analysis cannot provide a meaningful analysis of the factors that correlate with job performance and Dr. Dunleavy was wrong to rely on Dr. Ward's analysis for his opinion.

Relationship between the WRG and Job Performance

We re-analyzed the relationship between the experience variables credited in the WRG and Dr. Ward's measure of job performance (i.e., annualized sales), but controlled for store volume. Specifically, we were interested in examining Sterling's claims that "managerial experience has a statistically significant positive relationship with sales productivity, and that removing managerial experience from the WRG would hamper Sterling's ability to predict sales productivity" (Dunleavy Report, p. 18).

Prior to conducting the analyses controlling for store volume, we examined the distribution of the WRG previous experience variables separately by employment status (i.e., full time and part time). Sterling establishes the pay for its part-time employees at 85% of the hourly rate paid to full-time employees (Ward Report, p. A1-2). As a result, it is reasonable to assume that the applicant pools for full- and part-time employment will vary, i.e., people willing to accept part-time work and be paid at a lower rate are also likely to meaningfully differ in the levels and kinds of previous work experience. Thus, we examined differences in the WRG variables by employment status for the pool of WRG hires used by Dr. Ward in his Table A1.8 analyses. As anticipated, full-time employees had significantly more previous experience (and higher reported prior sales volumes) for work in all three job categories credited by the WRG: Personal Sales, Other Managers and Store Managers (see Table 1). Differences in the magnitude and pattern of these effects led us to examine the relationship between the WRG variables and job performance separately for full-time and part-time employees. Dr. Ward failed to control for the difference in prior experience of

full-time and part-time employees in his Table A1.8 and also included seasonable employees who are not part of proposed class increasing the unreliableness of his analysis.⁷

As noted earlier, we were particularly interested in Dr. Ward's finding that pre-hire managerial experience predicted success in non-managerial jobs at Sterling and that removing it from the factors considered by the WRG in making recommended pay determinations "would hamper Sterling's ability to predict sales productivity". We constructed a hierarchical multiple regression to examine this question⁸. Specifically, after controlling for store sales volume, we examined the incremental contribution in predicting success as a Sales Associate of Other Management experience and volume variables over the Personal Sales experience and Personal Sales volume variables, as well as the incremental contribution in predicting success as a Sales Associate of the Store Management experience and volume variables over all other WRG variables. These results are presented in Table 2.

We first examined the regressions for full-time employees. Store volume was entered in the first step of the regression analysis, which explained 16.1% (R-squared = .161) of the variance in job performance. By far the largest contribution to understanding how much a Sales Associate sold in his or her first year was the sales volume of the store in which he or she worked, a factor wholly independent of any individual employee's performance. Next, the pre-hire Personal Sales experience and volume variables were entered into the model. The pre-hire Personal Sales variables explained an additional 4.8%

⁷ Seasonal employees were excluded from the analyses.

⁸ We reanalyzed Dr. Ward's data from his Appendix A1.8 table controlling for store volume. We focused our analyses on the model that included all WRG variables as predictors. The criterion measure we used was Dr. Ward's average annualized sales during the first year of employment as a sales associate.

of the variance in job performance over and above store volume, an explanatory power that was both statistically and practically significant. In the third step, the set of pre-hire Other Management variables were added to the model. The incremental value of considering Other Management variables is quite small, explaining only an additional 0.1% of the variance to the prediction of job performance. The contribution of Other Management variables was not statistically significant. Finally, the pre-hire Store Management variables were entered into the model, explaining an additional 0.1% of the variance over and above the previous variables, and was also not statistically significant⁹. Taken together the two managerial categories accounted for only 0.2% of the variance in predicting a full-time Sales Associate's job performance. The small value of Store Management and Other Management pre-hire experience in predicting success as a Sales Associate is minimal, and should not have been credited in setting starting pay rates.

The hierarchical regression also provides the opportunity to examine the impact of the individual measures of previous experience. In looking at each individual measure of previous job experience for the sample of full time employees, only jewelry Personal Sales volume, and non-jewelry Personal Sales volume had statistically significant relationships with performance. For the sample of part time employees, only jewelry Personal Sales volume and jewelry Other Management volume were significantly related to job performance. However, even these few statistically significant measures added very little to

⁹ The pattern of results was similar for the sample of part time employees, except that the Other Management variables added a very small, but incremental prediction to job performance over and above Sales. Although this increment was statistically significant given the large sample size, the effect was extremely small as the additional variance in the annualized sales explained beyond Store Sales Volume and the Sales experience variables was only 0.2% for part-time employees.

the overall model. The squared semi-partial correlations¹⁰ in Table 2 indicate that the previous experience variable in the WRG with the most predictive power was jewelry Personal Sales volume, uniquely accounting for approximately 3% of the variance in annualized sales (squared semi-partial correlation of 0.028) for full-time employees and 1% for part-time employees. It is also the variable that is most appropriate for consideration because it meets the SIOP *Principles'* requirement that predictors have "an empirical, logical or theoretical foundation" (SIOP *Principles*, p. 17). The two other statistically significant WRG variables (Non-Jewelry Personal Sales Volume for full-time employees and Other Management – Jewelry volume for part-time employees) were much less useful, each uniquely accounting for 0.1% of the variance in predicted sales performance.

Taken together, the results of the regression analyses show that the management variables are not adding to the prediction of job performance, after store volume and pre-hire sales experience and volume are considered. In fact, most of the WRG inputs have little to no unique additional explanatory power when controlling for other variables in the model.

The analyses discussed above show that, of the variables measured by the WRG, Personal Sales volume is the best predictor of sales performance, Store Management experience and volumes do not predict sales performance and Other Management volume only predicts a very small percent of the variance in sales performance and only for part time employees.

¹⁰ The semi-partial correlation is a measure of the size of the relationship between this variable and performance of Sales Associates and, in that sense, is similar to a coefficient in a regression equation.

Gender Differences in Experience Variables

Given the non-significant results for many of the variables measured by the WRG, I examined the pattern of gender differences for all of the experience and volume variables in the WRG. The results of these analyses are shown in Table 3.

For full-time employees, statistically significant¹¹ gender differences were found for all the WRG variables except years of sales experience where men and women were found to have similar levels of experience. In some cases the difference between males and females was quite large.¹² For example, the largest difference between men and women was in the amount of Store Management experience recorded in the WRG database¹³ (as shown by a d of .29 for full time employees), yet Store Management experience is not a significant predictor of job performance as described above.

Gender differences in variables that are not predictive of job performance are especially of concern since such differences would cause compensation to be affected differentially for men and women on the basis of invalid experience factors. In fact, Dr. Ward Reported significant gender differences in pay for both full-time and part-time Sales Associates (Ward Report, p. 24, Table 8) and presented analyses attributing any observed gender differences to the previous experience and volume inputs to the WRG.

¹¹ Statistical significance was defined as p value < .01 due to the large sample sizes of full time (N=7315) and part time (N = 8029) employees.

¹² For the sample of part time employees, however, the magnitude of the differences between males and females was less dramatic, but significant differences were found on Other Management experience, Store Management experience, non-jewelry sales volume, jewelry store management volume, and non-jewelry store management volume.

¹³ The subsequent section of this report on reliability will address concerns about the accuracy of the information input to the WRG.

In sum, Sterling's experts have not presented evidence supporting the job relatedness of the WRG in my professional opinion. The limited and most predictive measures of experience in the WRG relate to sales volume. Additional experience factors which contribute to setting starting salaries for new hires at Sterling show significant gender differences and would disproportionately credit men for experience which is not predictive of success on the job.

RELIABILITY OF STERLING'S COMPENSATION AND PROMOTION PROCESSES

As articulated in professional and legal standards and as both Dr. Dunleavy and Dr. Stockdale have acknowledged (Dunleavy Report, p. 20; Stockdale Deposition, p. 154), reliability is a necessary prerequisite to the validity or job-relatedness of a selection procedure. Any analyses claiming to support the validity of Sterling's processes are meaningless and/or uninterpretable if the information considered to make compensation and promotion decisions is not shown to be consistent and reliable.

In their reports, Sterling's experts portray the company's processes as "formulaic" and "objective", apparently without any investigation of their actual use (Dunleavy Report, p. 3; Dunleavy Deposition, p. 104; Stockdale Report, p. 24; Ward Deposition, p. 139). In contrast, my examination of the deposition testimony, documents and data in this case revealed inconsistencies and irregularities in the application of Sterling's processes. The descriptions offered by the company's experts are not consistent with that reality.

Reliability refers to whether a selection procedure measures whatever characteristics it is measuring consistently. To ensure reliability, there must be standardization in the execution of the selection procedure (including, for example, what specific criteria are used and how those criteria are scored) to minimize the extent to which measurement error impacts the results. Without reliability, predictions about candidates' job performance are undermined since the selection procedure's results were contaminated by factors unrelated to the candidates' job relevant skills and abilities.

Inconsistency in Sterling's Use of the WRG

To investigate the reliability of Sterling's process for starting salaries we looked at the extent to which District Managers at Sterling followed company guidelines when setting starting salaries and used the Wage Rate Generator tool as intended.¹⁴ As a first step in investigating the reliability of Sterling's process for setting starting salaries, we investigated DMs' adherence to company policy around use of the WRG in our coding study sample and found a number of exceptions. Almost 24% of the hires in the WRG time frame were subject to one or more of the exceptions detailed below.

- DMs failed to use the Wage Rate Generator for 4.5% of sales associate hires in the July 2009 through January 18, 2013 time frame.
- The store entered into the WRG and used to compute applicants' recommended pay rate is different from actual hiring store in 5.8% of cases.
- Store data is missing entirely in another 2.5% of cases, which means the WRG algorithm was unable to generate a recommended rate and, in effect, the new hire's salary was established in the absence of WRG data.
- The employment status (*i.e.*, part-time, full-time, seasonal) entered into the WRG and used to compute applicant's recommended pay rate is different from actual employment status at the time of hire in 3.8% of cases.

¹⁴ Before the WRG was instituted in 2009, Sterling has indicated that it used the same prior experience factors that it included in the WRG (Luth Deposition 11/12/2012, p. 134; Liebler Deposition, p.38; Beck Deposition, pp. 32-33), but had no procedures in place to ensure the process for crediting prior job experience was reliable.

- The pay rate at which an applicant was hired is higher than the approved WRG wage rate in 4.6% of cases and lower than the approved rate in 1.0% of cases.
- The application date was between the WRG entry date and the hire date in 4% of cases.¹⁵

While the rate of occurrence for each of these individual exceptions is small, taken together they indicate that on average DMs failed to follow company guidelines for 1 out of every 4 hires.¹⁶ These exceptions suggest a lack of monitoring and oversight to ensure DMs adhered to company policy. Moreover, in some cases DMs may have been manipulating their WRG entries to obtain the desired wage rate. We looked at the rates at which each of anomalies occurred for male and female applicants and found that there was a higher rate of occurrence for male applicants for 5 of the 7 exceptions. These differences were statistically significant where the case was missing store data in the WRG, the actual hiring store was different from the store entered in the WRG, and the actual pay rate was higher than the WRG approved rate.¹⁷

We also found that DMs may have been entering applicant data into the WRG multiple times to “shop” for the desired wage rate. While there are legitimate reasons to update WRG entries (e.g., a DM’s plans change with regard to store placement or employment status, additional information is obtained during the employment interview),

¹⁵ In addition, we found that the application date was after the hire date for 3% of applicants across the entire 2003-2012 time frame.

¹⁶24% is the total number of hires with one or more exceptions to Sterling guidelines.

¹⁷ Sterling implemented a small change to the WRG in July 2011 which slightly impacted the percentage of hires with missing and mismatched store information. As a result, the statistically significant gender differences for those exceptions disappear for applicants hired after August 2011.

Sterling implemented a lockout function in the early part of 2010 to prohibit DMs from going into the WRG more than two times. In his discussion of the lockout at deposition, Mr. Berger indicates that some DMs may have updated WRG entries multiple times for legitimate reasons, but also concedes that others may have updated entries in an attempt to get the desired wage (Berger Deposition, pp. 157-161). We found that males were significantly more likely than females to have two or more WRG entries. Across the entire WRG timeframe, we found two or more WRG entries for an applicant in approximately 19% of the cases and three or more WRG entries in approximately 5.9% of cases. In the pre-lockout period we found two or more WRG entries for only approximately 11% of cases and three or more entries for approximately 7% of cases. In contrast, the percentages for the lockout period were approximately 20% and approximately 6%, respectively. In essence, Sterling's attempt to prohibit DMs from going into the WRG multiple times failed. WRG records were changed much more frequently in the lockout period than the pre-lockout period.

As a second step in our investigation of reliability, we looked at the extent to which the DMs' entry of experience data into the WRG was consistent with our coders' entry of experience data into Part 1 of the coding sheet. Our attempt in Part 1 of the coding sheet was to replicate Sterling's intended approach to the coding of applicant experience. Coders were trained to follow Sterling's guidance and provided with relevant excerpts from Sterling's training documents. Table 4 presents the results of our comparison of WRG and coder data for the entire sample of applicants in the WRG period as well as the subset of male applicants and the subset of female applicants. We found large statistically significant

differences in the coding of sales experience. The average years of sales experience entered by DMs into the WRG was 4.65, which is in stark contrast to the coder average of 1.49 years of sales experience. As can be seen in Table 4, when other aspects of the WRG algorithm are held constant at their default values, this discrepancy results in a difference of \$0.60 in the WRG recommended hourly rate.

A review of discrepancies between WRG and coder results for individual applications revealed two likely explanations for this rather large difference between DMs and coders. First, it appears that many of the DMs were very liberal in their interpretation of Sterling's definition of retail sales, crediting jobs as diverse as cashier, missionary and tourism advisor toward sales experience. This finding is unsurprising given the company's ambiguous definitions and lack of training in regard to what constitutes retail sales experience. Second, the review revealed cases with little to no correspondence between WRG entries and years of experience as indicated on the application, which suggests that some DMs may be manipulating their WRG entries in an attempt to get a desired wage for a given candidate or simply to ensure higher recommended wages across all new hires. Case documents suggest that Field Operations was of the opinion that the WRG was not calculating competitive wages (e.g., Berger Exhibit 5 at 01256258), so it is possible that manipulation of the experience entered into the WRG was intended to remedy this perceived shortcoming.

It is also important to note that managers' documentation of Proven Volume was not necessarily consistent with actual verification of applicants' sales volume. First, according to Sterling's WRG guidance, managers "can" give credit for prior experience but are not required to do so (Dunleavy Exhibit 23 at SJI00000442-443). My team's review of

discrepancies between WRG and coder results for individual applications revealed cases where DMs failed to credit experience that should have qualified in store manager and other management categories. For example, we identified a number of cases where Sterling failed to credit assistant manager experience. Second, the WRG includes a field for managers to denote the type of document or information reviewed when verifying Proven Volume (*i.e.*, Certification, Letter of Accommodation, Newsletter, Performance Appraisal, Trophy/Plaque, or Other (See Comment)). A review of comments recorded for the more than 40% of applicants with “Other” in the verification field suggests that managers were not required to verify actual sales volume figures. Instead, a random sample of 200 “Other (See Comment)” entries revealed comments such as “could not be verified,” “non proven,” and “no documents were provided” which indicate that in many cases DMs simply failed to rely on an objective source of information regarding an applicant’s sales productivity, nonetheless the WRG algorithm would cause the individual’s recommended wage to increase on the basis of this unproven volume information.

In sum, the number of exceptions and inconsistencies in the implementation of Sterling’s WRG process undoubtedly compromised the accuracy and job-relatedness of the company’s starting pay decisions.

Lack of Monitoring and Oversight in Sterling’s Compensation and Promotion Processes

The implementation of a company’s HR policies by its managers must be considered to render a judgment as to their validity and susceptibility to discrimination. As Dr. Dunleavy noted in his report (p. 20), “tools that are job-related in principle will be ineffective if they are substantially unreliable.” Inconsistency in the implementation and use of HR tools

introduces measurement error and comprises a selection tool's ability to accurately predict job performance Dr. Dunleavy elaborates on this point in his professional writing:

One aspect of the validation process that we have observed being overlooked fairly often is the implementation and use of a selection procedure ... The [*Uniform Guidelines*] are clear that the validation process is not finished once a selection procedure has been developed. Inconsistent or improper practices at the implementation stage create error in selection procedure scores, and as a result, make it more difficult to defend that the scores provide reliable information about an individual's potential job performance. (Dunleavy Exhibit 15)

Despite this assertion, Dr. Dunleavy offers no opinion on whether either the compensation or promotion practices at Sterling were implemented in a reliable manner (Dunleavy Deposition, pp. 23 and 127).

Quality controls are used by organizations to ensure that HR policies and procedures are implemented correctly and consistently across an organization. Examples of quality controls include training users, monitoring compensation decisions, requiring an approval process for exceptions to policy, and conducting adverse impact analyses. On the topic of training of managers to use the WRG properly, Dr. Dunleavy testified that he was unable to identify what training documents were actually sent to store and district managers and whether they ever actually attended a training session (Dunleavy Deposition, pp. 180-181), despite the statement in his report indicating that store and district Managers underwent extensive training covering the "WRG purpose, content and process" (Dunleavy Report, pp. 19, 21, 23, 40). Similarly, on the topic of Sterling's Career Advancement Registry training, Dr. Stockdale indicated that she did not know who attended the training or how often it was

given (Stockdale Deposition, pp. 129-130). She also says that she evaluated the company's HR training on the basis of its existence not its quality (Stockdale Deposition, p. 159-161).

Moreover, contrary to the statement in his report that the WRG was subject to internal audit (Dunleavy Report, p. 10), Dr. Dunleavy was unable to identify any evidence indicating that Sterling actually conducted internal audits of the WRG process (Dunleavy Deposition, p. 159-160). In his deposition, Dr. Ward also allowed that he had no knowledge of internal audits or error rate studies of the WRG process (pp. 183-184), nor did he assess the reliability of Sterling's WRG data (p. 185). Finally, Dr. Dunleavy acknowledges in his professional writings the importance of monitoring a selection procedure for adverse impact and searching for less adverse alternatives (Dunleavy Exhibit 18). Yet he testified that he has seen no evidence that Sterling monitored its compensation process for adverse impact (Dunleavy Deposition, p. 140) or evaluated any less adverse alternatives (Dunleavy Deposition, p. 148) because he was not asked to do so.

APPROPRIATENESS AND RELIABILITY OF THE CODER STUDY

Sterling argues that the use of “professional judgment” renders my team’s coding of applications inappropriate and unreliable. However, the methods and principles used to code applications in this matter are regularly used by Industrial/Organizational Psychologists to evaluate applicants’ training and experience in both research and practice. In particular, my team’s coding of applications was similar to the Minimum Qualifications (MQs) and the Training & Evaluation assessments (T&Es) used routinely by employers to screen and evaluate applicants. MQs are assessed by examining an application form for evidence of necessary prerequisite education, training, and/or experiences for minimally acceptable performance on the job. MQs are frequently used as an initial screen in a selection or promotion process and have been found to be fast, valid, job-related measures for assessing large numbers of applicants (Buster, Roth, & Bobko, 2005; Levine, Maye, Ulm, & Gordon, 1997). T&Es evaluate education, training, and/or various job and task experiences by assigning ratings to indicate the level of the applicant’s training and experience relative to requirements of the job. In the T&E methodology, candidates are either assigned points for the number of months or years of relevant training, education, or experience (Gatewood, Field, & Barrick, 2008) or grouped on the basis of their level of qualification (Ash, Johnson, Levine, & McDaniel, 1989). Applicants are rated or placed into groups by evaluators who consider the qualifications of the applicants using structured criteria and guidelines. Both the validity and the reliability of T&E ratings have been shown to fall in ranges considered acceptable by professional standards and consistent with the existing professional literature (Ash & Levine, 1985; Gatewood, Feild, & Barrick, 2001;

Gordon & Fitzgibbons, 1982; McDaniel, Schmidt, & Hunter, 1988; Schmidt, Hunter, & Outerbridge, 1986.)

The methods and principles used in my coding study are also consistent with the research methodology referred to as content analysis. Content analysis is a data reduction technique used to summarize and categorize text-based information such as letters and publications (Krippendorff, 2013; Weber, 1990). Content analysis allows a researcher to quantify and analyze such documents empirically. Central to content analysis is the identification of a standardized coding scheme for classifying text into content categories and the training of qualified professionals to code information in accordance with pre-defined criteria and guidelines.

Reliability of the Coding Study

In his report, Dr. Ward argues that the reliability estimates provided for my coding study were calculated incorrectly and details several concerns regarding my approach (p. 18). First, he argues that the intraclass correlations (ICCs) used to report reliability should have been computed by experience category (e.g., jewelry sales, non-jewelry sales) rather than computing the measure across all categories of coded experience. Dr. Ward's recommended approach is contrary to my objective, which was to represent the level of consistency in coders' overall judgments regarding the entirety of applicants' experience as reflected on the application form – a reliability measure computed across all experience categories does this. My ICCs appropriately reflect reliability across the entire application since it is Sterling's judgment across the various experience items that leads to an overall decision about an applicant's starting pay.

Looking at the reliability across the entire application is akin to looking at the reliability of an employment test; I/O psychologists generally look at the reliability of the overall employment test rather than the individual items that comprise the test.

Second, Dr. Ward notes that it would have been more appropriate to report individual measure ICCs rather than using the model for average measurements. While the average measure reflects the level of consistency in the reliability study since multiple coders rated each application, the single measure provides an appropriate estimate of the reliability of the larger coding study since each application was rated by a single coder. The single measure ICC for the entire coding sheet is .79 with an ICC of .88 for Part 1 of the coding sheet and an ICC of .72 for Part 2. Dr. Dunleavy reviewed these single measure ICCs, which were included in my production, and conceded that they were more than sufficient to indicate the reliability of the coding study (Dunleavy Report, p. 27).

Dr. Ward goes on to suggest an alternate, unsupported approach to evaluating the reliability of the coding study using ICCs – an approach he refers to as “matched inter-coder values.” To compute these values, which are reported by experience category, Dr. Ward examines the coding for a pair of coders on a given application and determines that it is a match if their experience estimates are within a half year of each other. Dr. Ward does this for all possible pairwise comparisons across all fifty applications in the reliability study and *eliminates cases where the two coders both recorded a zero* because he incorrectly assumes that it is “easy” to identify and code the lack of experience in a given category. While it may be easy to code an applicant with *no* prior work experience in a broad category such as sales, it may not be easy to reflect the exact nature of an applicant’s work history using the

various categories of experience. As shown in Table 5, I reanalyzed the reliability data without Dr. Ward's exclusions of data and found that it artificially lowered his reliability estimates. It is important to note that Dr. Ward's use of matched inter-coder values is unsupported by either the research literature or professional practice, which he concedes in his deposition (pp. 179-180). For example, Dr. Stockdale uses ICCs to establish the consistency of her own coders in content analyzing open-ended survey comments (Stockdale Report, pp. 108, 114).

In sum, the methods used to code applicant data and the ICC results establish the appropriateness and reliability of the coding study.

CONCERNS ABOUT THE RELEVANT EXPERTISE OF STERLING'S EXPERTS

Sterling's experts have limited relevant experience and reviewed only limited information to form their professional opinions. Sterling's experts offered opinions beyond their areas of expertise, and relied on each other's work, building on assumptions that they did not independently or critically evaluate.

Drs. Dunleavy and Sady

Drs. Dunleavy and Sady have limited professional experience^{18, 19} on which to base their opinions in this matter: neither is currently a licensed psychologist²⁰ and neither has previously testified, been deposed or been admitted by a court as an expert (Dunleavy Deposition, pp. 9 and 39).

This lack of experience may explain the failure to cite any basis in the record for the opinions in their report. In any event, Dr. Dunleavy was unable at deposition to recall the specific information and documents on which he based his statements, other than to cite to an appendix containing all documents reviewed. For example, he could "not recall" which documents in Appendix A to his report supported the assertion that the development of the WRG by subject matter experts is documented (Dunleavy Report, p. 39) or what "internal

¹⁸ Although counsel for Claimants requested the curriculum vitae (CVs) of Drs. Dunleavy and Sady, and Dr. Dunleavy testified that he had provided his CV to counsel for Sterling (Dunleavy Deposition p. 45), Sterling declined to produce their CVs.

¹⁹ Information about their backgrounds was obtained for Dr. Dunleavy from the bio listed on his company website (http://dciconsult.net/pr_consult_eric.asp; Dr. Sady was not listed) and their public LinkedIn profiles (<http://www.linkedin.com/pub/eric-dunleavy/5/659/1b0>; <http://www.linkedin.com/pub/kayo-sady/b/61a/a54>).

Dr. Dunleavy testified that he received his Ph.D. in December 2004 (Dunleavy Deposition, p. 46), while Dr. Sady appears to have received his Ph.D. in 2012 (Kayo Sady, LinkedIn Profile).

²⁰ Dr. Dunleavy testified that he is not a licensed psychologist and he did not know if Dr. Sady was licensed (Dunleavy Deposition, p. 46). Although Dr. Sady was not deposed, given the short tenure since receiving his Ph.D. and no listing for him as a licensed psychologist in Texas where he received his degree, we assume that he also is not licensed.

job performance metrics” (Dunleavy Report, p. 24) he asserts were used by the developers of the WRG “to determine prior experience factors associated with sales performance”, both of which are central to his argument that the WRG is valid. In fact, Dr. Dunleavy was neither able to provide information about the definition of “internal job performance metrics” (Dunleavy Deposition, p. 114), to identify the document related to “internal performance metrics” (Dunleavy Deposition, pp. 114-115), nor was he able to explain “anything” about the calculations reportedly made during the development period by Sterling (Dunleavy Deposition, p. 113).

Without a clear basis for his opinions, it is not possible to subject them to peer review in a scientific manner, contrary to the *SIOP Principles (Technical Validation Report section)*, which state:

Reports of validation efforts should include enough detail to enable a researcher competent in personnel selection to know what was done, to draw independent conclusions in evaluating the research, and to replicate the study. (*SIOP Principles*, p. 50)

Of even greater concern, however, is the amount of information Dr. Dunleavy and Dr. Sady did **not** review to form their opinions. Specifically, they did **not** review (or could not recall reviewing):

- Job descriptions for the Sterling sales associate jobs (Dunleavy Deposition, p. 49). Remarkably, they apparently only reviewed job descriptions for the Jared and Mall sales support jobs, which are **not** part of this case (Dunleavy Deposition, p. 49);

- Application forms, although they cite the application as an important part of the process for gathering experience information (Dunleavy & Sady report, p. 24);
- The WRG database (Dunleavy Deposition, p. 87), despite reaching conclusions about its reliability such as, “the specificity of the information sought and the structure of the information collection process are features that increase reliability” (Dunleavy Report, p. 3);
- The deposition of Robert Berger, the Director of Compensation, the person responsible for the design and implementation of the WRG and the only person deposed of those who participated in the Task Force development of the WRG;
- The depositions of several HR witnesses with access to information about the field implementation of HR policies (including Michael Lynch, the Vice President of Employee Relations; Joe Spagnola, the Director of the Resolve program and HR Compliance; and Tom Parks, Regional HR Specialist), despite reaching a conclusion based on a “cursory review of the deposition testimony” that “HR communicates regularly with field employees and implements and enforces corporate HR policy at the field level” (Dunleavy Report, p. 28). Dr. Dunleavy apparently reaches this conclusion without any reference to the deposition of Ms. Menett, the Director of Field HR, although his report indicates he had access to her deposition. Moreover,

even the HR depositions he did cite contain conflicting information to the “select deposition quotes” reported in Appendix E of his report.

- All but 2 of the approximately 240 declarations in this matter, and
- Any of the underlying calculations or definitions of variables (e.g., the selection of a criterion measure, the deletion of data at the top and bottom of the distributions) made by Dr. Ward on which Drs. Dunleavy and Sady repeatedly rely in their report (Dunleavy Report, pp, 2, 3, 4, 18, 19, 22, 25).

Incredibly, Dr. Dunleavy testified that he has “no opinion as to whether or not Dr. Ward” correctly examined the WRG database (Dunleavy Deposition, pp. 87-88), yet he is willing to conclude that Dr. Ward’s analyses show “unequivocally” that the WRG is job-related (Dunleavy Report, p. 19).

Dr. Stockdale

It appears from a review of the vita of Sterling’s expert, Dr. Margaret Stockdale, that she is an experienced academic in the field of industrial and organizational (I/O) psychology. However, as she conceded in her deposition, while she opines about Sterling’s promotion processes, she has never herself designed or implemented a promotion process for an employer (Stockdale Deposition, pp. 43-44). Despite the professional opinions she expressed concerning compensation processes in this case, she has was unable to identify any work she has done in the design of a compensation system in the past 30 years. While she does not opine about validation, she concedes she is not an expert in validation (Stockdale Deposition, p. 29).

Her review of the underlying documents was also limited. She reviewed no declarations (Stockdale Deposition, p. 60), analyzed only 46 case investigation files selected by Sterling's counsel (Stockdale Deposition, pp. 188-190); she did not know how many investigations had been conducted over the period of the litigation, and was uninformed about actual practice associated with making compensation and promotion decisions (e.g., who was trained, how policies were disseminated, what experience would be credited to various categories, etc.) (Stockdale Deposition, pp. 104-107, 118-119, 127-132, 144-145, and 158-164).

Dr. Stockdale accepted assumptions about the findings of other experts without independently verifying the adequacy of the data. For example, Dr. Stockdale testified that she was asked to assume that the experience factors used to make starting salary determinations were job relevant and would be addressed by Dr. Dunleavy. She testified that she "skimmed" the report to determine that they had done a reasonable analysis, but that she has no opinion on the validity of what was presented in the report (Stockdale Deposition, pp. 36-38).

She further was asked to assume that gender differences in starting salary were fully accounted for by prior experience, especially managerial experience, and would be shown to be so by Dr. Ward (Stockdale Report, pp. 24-25). Again, she testified that she did not perform an independent analysis of Dr. Ward's findings, but did "skim" his report.

Dr. Ward

Dr. Ward describes his background as being in the areas of labor economics and statistics (Ward Report, p. 1). Although his statistical analysis is relied upon by Drs.

Dunleavy and Sady for the conclusion that the WRG is “unequivocally” job-related (Dunleavy Report, p. 19), he claims no expertise in the area of validation (Ward Deposition, pp. 19-20), was never asked to conduct a validation study (Ward Deposition, p. 19), specifically indicates in his report that he is not addressing validity issues (Ward Report, p. 9) and never spoke with Drs. Dunleavy and Sady or received any instructions about particular analyses requested by them (Ward Deposition, p. 16) to address validity.

Dr. Ward testified at his deposition that, despite his criticisms of my coding study, he is not an expert on coding (Ward Deposition, p. 177).

Q. Have you ever coded applications to develop data for further analysis?

A. Attempted it on a couple occasions.

Q. Have you ever completed any statistical analyses in which you used data that you had coded?

A. It is extremely difficult.

Q. And that’s not your area of expertise, coding applications?

A. I mean, I can turn documents into numbers. But insofar as it requires a judgment, no, I’m not an expert in that kind of judgment. (Ward Deposition, p. 177)

Dr. Ward’s lack of familiarity with coding protocols and standard practices in the analysis of such data may explain his lack of familiarity with techniques commonly used by I/O psychologists to assess the reliability of a coding study (Ward Deposition, p. 180), which both Dr. Dunleavy and Dr. Stockdale acknowledge as the standard for assessing reliability in their reports. In fact, Dr. Stockdale used the same ICC technique in her own study for her expert report in this matter which Dr. Ward criticized me for using (Ward Report, pp. 18-

20). Dr. Ward's criticisms and novel, but not professionally recognized, techniques for assessing reliability make his criticisms of the coding study without scientific merit.

CONCLUSION

As a result of my review of the reports and deposition testimony of Sterling's experts, along with independent analyses undertaken to respond to their criticisms of my report and their support of Sterling's practices, it remains my professional opinion that the promotion and compensation decisions made for the retail sales and management jobs at Sterling lack sufficient reliability and validity to be considered job-related. Moreover, the lack of consistency and structure permitted measurement error to occur, including intentional or unintentional biases. Additionally, barriers to the advancement and equitable compensation of female employees increased the likelihood of gender discrimination in promotion and compensation at Sterling.

RATE OF COMPENSATION

My firm, *APTMetrics*, is being compensated for the studies involved in forming my opinions, my review and analysis of evidence and depositions, and my testimony at a rate of \$550 per hour. *APTMetrics* is being compensated for the time of additional members of the staff at their normal billing rates, ranging from \$50 to \$350 per hour. Out of pocket expenses incurred in connection with *APTMetrics'* assistance in this case are also being reimbursed.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 13rd day of January, 2014, in Darien, Connecticut.

A handwritten signature in cursive script that reads "Kathleen K. Lundquist". The signature is written in black ink and is centered on the page.

Kathleen K. Lundquist, Ph.D.

TABLES

Table 1. Comparison of WRG Categories by Employment Status

WRG Category	Full Time			Part Time			t-test sig.	d
	N	Mean	SD	N	Mean	SD		
Sales Experience	7315	3.52	1.76	8029	2.57	1.86	0.00**	0.52
Other Mgmt. Experience	7315	1.27	1.83	8029	0.57	1.35	0.00**	0.44
Store Mgmt. Experience	7315	1.15	1.92	8029	0.34	1.13	0.00**	0.52
Sales Volume - Jewelry	7314	1.61	1.77	8029	0.80	0.89	0.00**	0.59
Sales Volume - Non-Jewelry	7313	1.27	1.56	8029	0.83	1.00	0.00**	0.34
Other Mgmt. Volume - Jewelry	7309	0.39	0.68	8029	0.15	0.36	0.00**	0.43
Other Mgmt. Volume - Non-Jewelry	7314	0.46	0.89	8029	0.18	0.50	0.00**	0.39
Store Mgmt. Volume - Jewelry	7315	0.36	0.76	8028	0.09	0.34	0.00**	0.46
Store Mgmt. Volume - Non-Jewelry	7313	0.37	0.85	8028	0.10	0.40	0.00**	0.42

Note: Significant differences indicated by t-test sig < .01.

Note: d = effect size for difference in means; small effect = .20; medium effect = .50; large effect = .80.

*Note: **p < .01.*

Table 2. Incremental Prediction of WRG Variables by Employment Status

Step	Predictor	Model Statistics		Predictor Statistics		
		R-Squared Change	Sig. Change	Standardized Coefficient	Sig.	Squared Semi-Partial
Full Time Sales Associates						
1	Store Volume	0.161	0.000**	0.321	0.000**	0.081
2	Sales Experience	0.048	0.000**	-0.006	0.602	0.000
	Sales Volume - Jewelry			0.214	0.000**	0.028
	Sales Volume - Non-Jewelry			-0.034	0.005**	0.001
3	Other Mgmt. Experience	0.001	0.014	-0.002	0.901	0.000
	Other Mgmt. Volume - Jewelry			0.029	0.033	0.000
	Other Mgmt. Volume - Non-Jewelry			0.012	0.387	0.000
4	Store Mgmt. Experience	0.001	0.028	0.029	0.082	0.000
	Store Mgmt. Volume - Jewelry			0.004	0.812	0.000
	Store Mgmt. Volume - Non-Jewelry			0.003	0.855	0.000
Overall Model R-Squared		0.211				
Part Time Sales Associates						
1	Store Volume	0.108	0.000**	0.293	0.000**	0.077
2	Sales Experience	0.020	0.000**	0.028	0.018	0.001
	Sales Volume - Jewelry			0.121	0.000**	0.010
	Sales Volume - Non-Jewelry			-0.016	0.172	0.000
3	Other Mgmt. Experience	0.002	0.002**	0.000	0.988	0.000
	Other Mgmt. Volume - Jewelry			0.044	0.006**	0.001
	Other Mgmt. Volume - Non-Jewelry			-0.010	0.504	0.000
4	Store Mgmt. Experience	0.000	0.415	0.005	0.785	0.000
	Store Mgmt. Volume - Jewelry			0.003	0.838	0.000
	Store Mgmt. Volume - Non-Jewelry			0.013	0.396	0.000
Overall Model R-Squared		0.129				

Note: Significant effects indicated by sig < .01.

Note: **p < .01.

Table 3. Comparison of WRG Categories by Gender and Employment Status

WRG Category	Male			Female			t-test sig.	d
	N	Mean	SD	N	Mean	SD		
Full Time								
Sales Experience	2485	3.57	1.74	4830	3.49	1.77	0.06	0.05
Other Mgmt. Experience	2485	1.36	1.89	4830	1.22	1.80	0.00**	0.07
Store Mgmt. Experience	2485	1.51	2.11	4830	0.97	1.78	0.00**	0.29
Sales Volume - Jewelry	2485	1.73	1.91	4829	1.55	1.69	0.00**	0.10
Sales Volume - Non-Jewelry	2484	1.47	1.77	4829	1.16	1.42	0.00**	0.19
Other Mgmt. Volume - Jewelry	2482	0.42	0.75	4827	0.37	0.64	0.00**	0.08
Other Mgmt. Volume - Non-Jewelry	2485	0.53	1.00	4829	0.43	0.82	0.00**	0.12
Store Mgmt. Volume - Jewelry	2485	0.51	0.95	4830	0.28	0.63	0.00**	0.31
Store Mgmt. Volume - Non-Jewelry	2484	0.48	0.96	4829	0.32	0.79	0.00**	0.19
Part Time								
Sales Experience	1985	2.53	1.86	6044	2.59	1.86	0.22	-0.03
Other Mgmt. Experience	1985	0.65	1.43	6044	0.55	1.31	0.00**	0.08
Store Mgmt. Experience	1985	0.41	1.22	6044	0.31	1.09	0.00**	0.09
Sales Volume - Jewelry	1985	0.80	0.93	6044	0.80	0.87	0.96	0.00
Sales Volume - Non-Jewelry	1985	0.96	1.24	6044	0.79	0.90	0.00**	0.17
Other Mgmt. Volume - Jewelry	1985	0.17	0.37	6044	0.15	0.35	0.06	0.05
Other Mgmt. Volume - Non-Jewelry	1985	0.21	0.56	6044	0.17	0.48	0.02	0.07
Store Mgmt. Volume - Jewelry	1985	0.12	0.42	6043	0.08	0.31	0.00**	0.13
Store Mgmt. Volume - Non-Jewelry	1985	0.14	0.50	6043	0.08	0.36	0.00**	0.13

Note: Significant differences indicated by t-test sig < .01.

Note: d = effect size for difference in means; small effect = .20; medium effect = .50; large effect = .80.

Note: **p < .01.

Table 4. Comparisons of Applicants' Years of Experience by Data Source

Category	WRG			Coder			t-test sig.	d
	N	Mean	SD	N	Mean	SD		
Sales	1664	4.65	5.54	1664	1.49	3.12	0.00**	0.62
Store Manager	1712	1.49	4.11	1712	1.19	4.05	0.00**	0.08
Other Management	1693	1.25	2.85	1693	1.28	3.27	0.67	-0.01

Note: Significant differences indicated by t-test sig < .01.

Note: d = effect size for difference in means; small effect = .20; medium effect = .50; large effect = .80.

*Note: **p < .01.*

Table 5. Matched Inter-Coder Values

Experience Categories	Ward's Coder Values	Coder Values with Zero Matches Included
Overall	n/a	87.3%
Overall - Part 1 (WRG Sales Categories)	n/a	88.2%
Overall - Part 2 (APT Categories)	n/a	85.8%
WRG Sales Categories		
Sales - Jewelry Sales	73.1%	94.8%
Sales - Jewelry Other Mgr	58.8%	94.6%
Sales - Jewelry Store Mgr	75.7%	97.2%
Sales - Non-Jewelry Sales	32.9%	71.1%
Sales - Non-Jewelry Other Mgr	49.5%	81.1%
Sales - Non-Jewelry Store Mgr	53.7%	90.3%
Dr. Lundquist Sales Categories		
Sales - Active, Direct	48.8%	80.4%
Sales - Active, Indirect	32.7%	97.1%
Sales - Passive	39.3%	74.1%
Sales - Support	41.3%	84.7%
Sales - Transactional	43.8%	85.9%
Sales - Ambiguous	9.7%	94.2%
Dr. Lundquist Customer Service Categories		
Cust Svc - Primary, Direct	50.3%	84.8%
Cust Svc - Primary, Indirect	44.5%	93.7%
Cust Svc - Public	49.5%	85.0%
Cust Svc - Secondary	22.9%	66.4%
Cust Svc - Ambiguous	1.9%	97.7%
Other		
Time in Jobs Requiring Product Knowledge	10.5%	97.7%

ATTACHMENT A

DOCUMENTS REVIEWED

<i>Electronic File Name</i>	<i>Document Name or Description</i>	<i>Pages</i>	<i>Bates #</i>
SJI 00004362	Mall - Recommended Management Change: Rose VonBretzel	1	SJI 00004362
SJI 00010186 - 10188	Store Performance Appraisal: Nina Shabmirzadi	1-3	SJI 00010186 - 188
SJI 00010280 - 10281	Sales Performance Appraisal: Dawn Gouto-Coons	1-2	SJI 00010280 - 281
SJI 00051539 - 51540	Internal Memo: regarding TIP Line	1-2	SJI 00051539 - 540
SJI 00310186 - 88	Performance appraisal for 2008	1-3	SJI 00310186 - 88
SJI 01254416 - 1254417	Email re: WG Reassignments	1-2	SJI 01254416 - 417
SJI 01255984_ CONFIDENTIAL_ Hewitt - Compensation Competiveness	Market Validation Report: August 16, 2004	1-33	SJI01255984-6016
SJI 01256017_ CONFIDENTIAL_ Hewitt - Incentive Program Assessment	Incentive Program Assessment: August 2004	1-44	SJI01256017-060
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exhibit 2	Expert Report of Dr. Kathleen K. Lundquist	1-97	
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exhibit 4	WRG Presentation with Beck notes	1-26	SJI01046400-425
exhibit 5	WRG Presentation without Beck notes	1-22	SJI_EEOC012929-312
exhibit 6	Wage Generator Wage Override Analysis	1-29	
exhibit 7	APT Coding Template	1-3	
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exhibit 10	Succession Management: District Manager Lesson Plan	1-52	SJI00032416-467
exhibit 11	Module 4: Recruiting and Succession Planning	1-40	SJI00028892-931
exhibit 12	Succession Management: District Manager Lesson Plan	1-53	SJI00032416-467
exhibit 13	Module 4: Recruiting and Succession Planning	1-41	SJI00028892-931
exhibit 14	Additional Guidelines for APT coders	1-3	
exhibit 15	Sample Sterling application from KKL Deposition	1-2	SJI01262450-51

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exhibit 16	Sample Sterling application from KKL Deposition	1-2	SJI01260427-8
exhibit 17	Sample Sterling application from KKL Deposition	1-2	SJI01260190-91
exhibit 18	Sample Sterling application from KKL Deposition	1-2	SJI01280310-11
exhibit 19	Sample Sterling application from KKL Deposition	1-2	SJI01264636-37
exhibit 20	Sample Sterling application from KKL Deposition	1-2	SJI01261211-12
exhibit 21	Sample Sterling application from KKL Deposition	1-2	SJI01265066-67
exhibit 22	Sample Sterling application from KKL Deposition	1-2	SJI01280383-84
exhibit 23	Sample Sterling application from KKL Deposition	1-2	SJI01261654-55
exhibit 24	Sample Sterling application from KKL Deposition	1-2	SJI01261658-59
exhibit 25	Sample Sterling application from KKL Deposition	1-2	SJI01282319-20
exhibit 26	Sample Sterling application from KKL Deposition	1-2	SJI01284390-91
exhibit 27	Sample Sterling application from KKL Deposition	1-2	SJI01263645-46
exhibit 28	Letter from EEOC to Dr. Locklear	1-2	E000011880-81
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Ex 210 SJI 1030131-32	Memo with topic of "Compliance Update" dated September 2006 (Exh 210)	1-3	SJI01030131-SJI01030132
Ex 211 SJI 1285226	Fall 2008 Merit Demographics (Exhibit 211)	1-6	SJI1285226
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Ex A	Order Addressing Claimants' July 3, 2013 Motion to Compel Production of Clawed Back Documents	1-12	
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Expert Report of Dunleavy and Sady.pdf	Expert Report of Drs. Eric Dunleavy and Kayo Sady in Jock v. Sterling and EEOC v Sterling	1-44	
Expert Report of Margaret S. Stockdale	Expert Report of Margaret Stockdale in re: Jock v. Sterling	1-178	

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1. Motion To Exclude The Report And Testimony Of Dr. Kathleen Lundquist	Sterling Jewelers Inc.'s Motion to Exclude the Report and Testimony of Dr. Kathleen Lundquist	1-51	
SJI 8280-84	DMT Monthly Update: FYTD June 2007 Tier 1 and Tier 2	1-5	SJI 00008280-8284
SJI 8299-301	DMT Monthly Update: FYT Jan 2008	1-3	SJI 00008299-8301
SJI 10692-713	Talent Acquisition: Mall CDS Facilitator's Guide	1-22	SJI 00010692-713
SJI 28045-72	Talent Acquisition: Mall Career Development School	1-28	SJI 00028045-8072
SJI 28099-114	Standards Performance Review: Mall Career Development School Facilitator's Guide	1-16	SJI 00028099-8114
SJI 31230-315	Recruiting Manual and Sterling Jewelers Tour	1-86	SJI 00031230-1315
SJI 61699-70	Store Weekly One-on-One Review	1-2	SJI 00061669-670
SJI 419582-87	Behavioral Interview for Management	1-6	SJI 00419582-9587
SJI 419588-92	Behavioral Interview for Sales Employees	1-5	SJI 00419588-4592
SJI 774802-57	Managing Your Wage Rates for 2008: District Managers Meeting February 2008	1-56	SJI 00774802-4857
SJI 1033950-53	Internal Investigation Summary Report - Additional Information	1-4	SJI 01033950-3953
SJI 1255921-74	Managing Your Wage Rates for 2008: District Managers Meeting February 2008	1-54	SJI 01255921-5974
SJI 1285438-53	Internal Investigation Summary Report	1-16	SJI 01285438-453
convstr	.ADO data file from Ward	NA	NA
dums	.ADO data file from Ward	NA	NA
pctl	.ADO data file from Ward	NA	NA
predlpm	.ADO data file from Ward	NA	NA
qreg2	.ADO data file from Ward	NA	NA
cars.dta	.GZ data file from Ward	NA	NA
carsnap_AMGR.dta	.GZ data file from Ward	NA	NA
carsnap_DMGR.dta	.GZ data file from Ward	NA	NA
carsnap_DPMGR.dta	.GZ data file from Ward	NA	NA
carsnap_reloc.dta	.GZ data file from Ward	NA	NA
carsnap_SMGR.dta	.GZ data file from Ward	NA	NA
cpi.dta	.GZ data file from Ward	NA	NA
emp_cats.dta	.GZ data file from Ward	NA	NA
firsttime_AMGR.dta	.GZ data file from Ward	NA	NA
firsttime_DPMGR.dta	.GZ data file from Ward	NA	NA

Electronic File Name	Document Name or Description	Pages	Bates #
firsttime_SMGR.dta	.GZ data file from Ward	NA	NA
NEW_DEC_FINAL.dta	.GZ data file from Ward	NA	NA
PDjan_final.dta	.GZ data file from Ward	NA	NA
review.dta	.GZ data file from Ward	NA	NA
snap.dta	.GZ data file from Ward	NA	NA
snap_AMGR.dta	.GZ data file from Ward	NA	NA
snap_DPMGR_jared.dta	.GZ data file from Ward	NA	NA
snap_first_AMGR.dta	.GZ data file from Ward	NA	NA
snap_first_DPMGR.dta	.GZ data file from Ward	NA	NA
snap_first_SMGR.dta	.GZ data file from Ward	NA	NA
snap_SALS_ft.dta	.GZ data file from Ward	NA	NA
snap_SALS_ft_jared.dta	.GZ data file from Ward	NA	NA
snap_SMGR.dta	.GZ data file from Ward	NA	NA
store_cats.dta	.GZ data file from Ward	NA	NA
trans_final.dta	.GZ data file from Ward	NA	NA
trans_final_proms.dta	.GZ data file from Ward	NA	NA
trans_smgr_dm.dta	.GZ data file from Ward	NA	NA
a	logs in text format from Ward	NA	NA
a1	logs in text format from Ward	NA	NA
a2	logs in text format from Ward	NA	NA
a3	logs in text format from Ward	NA	NA
anapps	logs in text format from Ward	NA	NA
anapps2	logs in text format from Ward	NA	NA
anmatch	logs in text format from Ward	NA	NA
anwrg_perf	logs in text format from Ward	NA	NA
comment	logs in text format from Ward	NA	NA
cp	logs in text format from Ward	NA	NA
cr_rel	logs in text format from Ward	NA	NA
cr_relb	logs in text format from Ward	NA	NA
l1	logs in text format from Ward	NA	NA
l2	logs in text format from Ward	NA	NA
l3	logs in text format from Ward	NA	NA
l4	logs in text format from Ward	NA	NA
l5	logs in text format from Ward	NA	NA
m	logs in text format from Ward	NA	NA
p	logs in text format from Ward	NA	NA
t	logs in text format from Ward	NA	NA
t1	logs in text format from Ward	NA	NA
t2	logs in text format from Ward	NA	NA
t3	logs in text format from Ward	NA	NA
t4	logs in text format from Ward	NA	NA
t5	logs in text format from Ward	NA	NA
t6	logs in text format from Ward	NA	NA

Electronic File Name	Document Name or Description	Pages	Bates #
t7	logs in text format from Ward	NA	NA
t8	logs in text format from Ward	NA	NA
t9	logs in text format from Ward	NA	NA
t10	logs in text format from Ward	NA	NA
t11	logs in text format from Ward	NA	NA
t12	logs in text format from Ward	NA	NA
t13	logs in text format from Ward	NA	NA
t14	logs in text format from Ward	NA	NA
t15	logs in text format from Ward	NA	NA
t16	logs in text format from Ward	NA	NA
w1	logs in text format from Ward	NA	NA
w2	logs in text format from Ward	NA	NA
w3	logs in text format from Ward	NA	NA
w4	logs in text format from Ward	NA	NA
w5	logs in text format from Ward	NA	NA
a	DO data file from Ward	NA	NA
a1	DO data file from Ward	NA	NA
a2	DO data file from Ward	NA	NA
a3	DO data file from Ward	NA	NA
anapps	DO data file from Ward	NA	NA
anapps2	DO data file from Ward	NA	NA
anmatch	DO data file from Ward	NA	NA
anwrg_perf	DO data file from Ward	NA	NA
cp	DO data file from Ward	NA	NA
cpi	DO data file from Ward	NA	NA
cr_rel	DO data file from Ward	NA	NA
cr_relb	DO data file from Ward	NA	NA
crcars	DO data file from Ward	NA	NA
crNEW_DEC_FINAL	DO data file from Ward	NA	NA
crproms_dm	DO data file from Ward	NA	NA
crsnap	DO data file from Ward	NA	NA
crsnap_proms	DO data file from Ward	NA	NA
crtrans_final	DO data file from Ward	NA	NA
crtrans_final_prom	DO data file from Ward	NA	NA
f	DO data file from Ward	NA	NA
fxom_vol	DO data file from Ward	NA	NA
fxsl_vol	DO data file from Ward	NA	NA
fxsm_vol	DO data file from Ward	NA	NA
l1	DO data file from Ward	NA	NA
l2	DO data file from Ward	NA	NA
l3	DO data file from Ward	NA	NA
l4	DO data file from Ward	NA	NA

<i>Electronic File Name</i>	<i>Document Name or Description</i>	<i>Pages</i>	<i>Bates #</i>
I5	DO data file from Ward	NA	NA
m	DO data file from Ward	NA	NA
mkcats	DO data file from Ward	NA	NA
mkemp_cats	DO data file from Ward	NA	NA
mkjob	DO data file from Ward	NA	NA
mkstore_cats	DO data file from Ward	NA	NA
p	DO data file from Ward	NA	NA
PD	DO data file from Ward	NA	NA
t	DO data file from Ward	NA	NA
t1	DO data file from Ward	NA	NA
t2	DO data file from Ward	NA	NA
t3	DO data file from Ward	NA	NA
t4	DO data file from Ward	NA	NA
t5	DO data file from Ward	NA	NA
t6	DO data file from Ward	NA	NA
t7	DO data file from Ward	NA	NA
t8	DO data file from Ward	NA	NA
t9	DO data file from Ward	NA	NA
t10	DO data file from Ward	NA	NA
t11	DO data file from Ward	NA	NA
t12	DO data file from Ward	NA	NA
t13	DO data file from Ward	NA	NA
t14	DO data file from Ward	NA	NA
t15	DO data file from Ward	NA	NA
t16	DO data file from Ward	NA	NA
w1	DO data file from Ward	NA	NA
w2	DO data file from Ward	NA	NA
w3	DO data file from Ward	NA	NA
w4	DO data file from Ward	NA	NA
w5	DO data file from Ward	NA	NA
CPI	Consumer Price Index Spreadsheet from Ward	NA	NA
CPI	Consumer Price Index Spreadsheet from Ward	NA	NA
hrhistory_fix	SPSS output spreadsheet of employee data from Ward	NA	NA
emstatus	employee data from Ward	NA	NA
paysumgrp	employee data from Ward	NA	NA
crStore	.DO file from Ward	NA	NA
twoemps	employee data from Ward	NA	NA
42Locations	WRG data on employees by location from Ward	NA	NA

Electronic File Name	Document Name or Description	Pages	Bates #
floor_minimums	minimum pay rates from Ward	NA	NA
floors	pay rates by "floor" from Ward	NA	NA
location	pay rates by location from Ward	NA	NA
logos	numerical identifiers for store locations from Ward	NA	NA
regionality	regional data From Ward	NA	NA
Starting.Wage.Generator.FIS .Phase2.1_location	WRG data from Ward	NA	NA
StateMinimumWage. Changes	minimum wage changes by state from Ward	NA	NA
SWRG.Reports	data from Ward	NA	NA
VP Approvals	VP approved pay rates (text)	NA	NA
VP Approvals	VP approved pay rates (Excel) from Ward	NA	NA
zip_codes	list of zip codes from Ward	NA	NA
fxstatus	.DTA file from Ward	NA	NA
Sterling Backup	list of documents from Ward	NA	NA
apps_small.dta	.GZ data file from Ward	NA	NA
cars_all.dta	.GZ data file from Ward	NA	NA
employeelist.dta	.GZ data file from Ward	NA	NA
hires_matched.dta	.GZ data file from Ward	NA	NA
prtime.dta	.GZ data file from Ward	NA	NA
reviews.dta	.GZ data file from Ward	NA	NA
rpay_mo.dta	.GZ data file from Ward	NA	NA
sales_perf.dta	.GZ data file from Ward	NA	NA
sales_store_year.dta	.GZ data file from Ward	NA	NA
salesmo.dta	.GZ data file from Ward	NA	NA
salesmo_long.dta	.GZ data file from Ward	NA	NA
salesmo_store.dta	.GZ data file from Ward	NA	NA
sisdb_emp.dta	.GZ data file from Ward	NA	NA
sisdb_store.dta	.GZ data file from Ward	NA	NA
sisdb_yrmo.dta	.GZ data file from Ward	NA	NA
store_class.dta	.GZ data file from Ward	NA	NA
store_info.dta	.GZ data file from Ward	NA	NA
trans_final.dta	.GZ data file from Ward	NA	NA
wagerategen.dta	.GZ data file from Ward	NA	NA
wrg_2.dta	.GZ data file from Ward	NA	NA
wrg_perf.dta	.GZ data file from Ward	NA	NA
wrg09.dta	.GZ data file from Ward	NA	NA
wrg09_2.dta	.GZ data file from Ward	NA	NA
capdrop	.ADO data file from Ward	NA	NA
dups	.ADO data file from Ward	NA	NA
replstr	.ADO data file from Ward	NA	NA

Electronic File Name	Document Name or Description	Pages	Bates #
smfmt	.ADO data file from Ward	NA	NA
sumover	.ADO data file from Ward	NA	NA
trimblnk	.ADO data file from Ward	NA	NA
crapps	.DO file from Ward	NA	NA
crcars_all	.DO file from Ward	NA	NA
crdistno	.DO file from Ward	NA	NA
crdmtrans	.DO file from Ward	NA	NA
cremployeelisting	.DO file from Ward	NA	NA
crhist_payroll	.DO file from Ward	NA	NA
crhrhistory	.DO file from Ward	NA	NA
crminwages	.DO file from Ward	NA	NA
crorig_sisdb_emp	.DO file from Ward	NA	NA
crorig_sisdb_store	.DO file from Ward	NA	NA
crpayrecs	.DO file from Ward	NA	NA
crpaysumgrp	.DO file from Ward	NA	NA
crpersacthst	.DO file from Ward	NA	NA
crpratehist	.DO file from Ward	NA	NA
crptime	.DO file from Ward	NA	NA
crregion	.DO file from Ward	NA	NA
crreviews	.DO file from Ward	NA	NA
crpay	.DO file from Ward	NA	NA
crsales_info	.DO file from Ward	NA	NA
crsales_perf	.DO file from Ward	NA	NA
crsalesmo	.DO file from Ward	NA	NA
crsisdb_emp	.DO file from Ward	NA	NA
crsisdb_store	.DO file from Ward	NA	NA
crsisdb_yrmo	.DO file from Ward	NA	NA
crstore_class	.DO file from Ward	NA	NA
crtables	.DO file from Ward	NA	NA
crstore_info	.DO file from Ward	NA	NA
crtrans_final	.DO file from Ward	NA	NA
crtrans2	.DO file from Ward	NA	NA
crvpexceptions_1	.DO file from Ward	NA	NA
crwagerategen	.DO file from Ward	NA	NA
crwrg_2	.DO file from Ward	NA	NA
crwrg_perf	.DO file from Ward	NA	NA
crwrg09	.DO file from Ward	NA	NA
crwrg09_2	.DO file from Ward	NA	NA
datesonly	.DO file from Ward	NA	NA
fixemp	.DO file from Ward	NA	NA
hire_term_begdt	.DO file from Ward	NA	NA

Electronic File Name	Document Name or Description	Pages	Bates #
mktotcomp_codes	.DO file from Ward	NA	NA
updateminwage	.DO file from Ward	NA	NA
updates_to_hist	.DO file from Ward	NA	NA
wrgmatch	.DO file from Ward	NA	NA
xwalk	.DO file from Ward	NA	NA
Employee Survey_2004 2005 2008_comments	Excel spreadsheet of employee survey comments from Stockdale	NA	NA
NCSW data for tables	SPSS output spreadsheet of employee data from Stockdale	NA	NA
NCSW data for tables_v2	SPSS output spreadsheet of employee data from Stockdale	NA	NA
NSCW output_v1	SPSS output spreadsheet of employee data from Stockdale	NA	NA
NSCW output_v2	SPSS output spreadsheet of employee data from Stockdale	NA	NA
NSCW output_v3	SPSS output spreadsheet of employee data from Stockdale	NA	NA
Sterling - Lightspeed Calcs_v1-1	Data from Stockdale	NA	NA
Syntax_v1	SPSS syntax from Stockdale	NA	NA
Wonderlic Sterling survey data_sent to ARC (2)	Survey data from Stockdale	NA	NA
Wonderlic Sterling survey data_sent to ARC	Survey data from Stockdale	NA	NA
Wonderlic survey data	Survey data from Stockdale	NA	NA
Wonderlic survey data_comments	Survey data from Stockdale	NA	NA
Comparison of retail sales to first line supervisor	data comparing retail sales to first line supervisor	NA	NA
deposition review summary	summary review of depositions	NA	NA
other deposition language	notes on depositions from Dunleavy & Sady	NA	NA
cars_10	analysis files (.dta) from Ward	NA	NA
cpi_10	analysis files (.dta) from Ward	NA	NA
emp_cats_10	analysis files (.dta) from Ward	NA	NA
firsttime_AMGR_10	analysis files (.dta) from Ward	NA	NA
firsttime_DPMGR_10	analysis files (.dta) from Ward	NA	NA
firsttime_SMGR_10	analysis files (.dta) from Ward	NA	NA
PDJan_final_10	analysis files (.dta) from Ward	NA	NA
review_10	analysis files (.dta) from Ward	NA	NA
snap_10	analysis files (.dta) from Ward	NA	NA
snap_AMGR_10	analysis files (.dta) from Ward	NA	NA
snap_DMGR_jared_10	analysis files (.dta) from Ward	NA	NA
snap_first_AMGR_10	analysis files (.dta) from Ward	NA	NA
snap_first_DPMGR_10	analysis files (.dta) from Ward	NA	NA

Electronic File Name	Document Name or Description	Pages	Bates #
snap_first_SMGR_10	analysis files (.dta) from Ward	NA	NA
snap_SALS_ft_10	analysis files (.dta) from Ward	NA	NA
snap_SALS_ft_jared	analysis files (.dta) from Ward	NA	NA
snap_SMGR_10	analysis files (.dta) from Ward	NA	NA
store_cats_10	analysis files (.dta) from Ward	NA	NA
trans_final_proms_10	analysis files (.dta) from Ward	NA	NA
trans_final_10	analysis files (.dta) from Ward	NA	NA
trans_smgr_dm_10	analysis files (.dta) from Ward	NA	NA
apps_small_10	data files (.dta) from Ward	NA	NA
cars_10	data files (.dta) from Ward	NA	NA
employeelistig_10	data files (.dta) from Ward	NA	NA
hires_matched_10	data files (.dta) from Ward	NA	NA
prtime_10	data files (.dta) from Ward	NA	NA
reviews_10	data files (.dta) from Ward	NA	NA
rpay_mo_10	data files (.dta) from Ward	NA	NA
sales_mo_long_10	data files (.dta) from Ward	NA	NA
sales_perf_10	data files (.dta) from Ward	NA	NA
sales_store_year_10	data files (.dta) from Ward	NA	NA
salesmo_10	data files (.dta) from Ward	NA	NA
salesmo_long_10	data files (.dta) from Ward	NA	NA
salesmo_store_10	data files (.dta) from Ward	NA	NA
sisdb_emp_10	data files (.dta) from Ward	NA	NA
sisdb_store_10	data files (.dta) from Ward	NA	NA
sisdb_yrmo_10	data files (.dta) from Ward	NA	NA
store_class_10	data files (.dta) from Ward	NA	NA
store_info_10	data files (.dta) from Ward	NA	NA
trans_final_10	data files (.dta) from Ward	NA	NA
wagerategen_10	data files (.dta) from Ward	NA	NA
wrg_2_10	data files (.dta) from Ward	NA	NA
wrg_perf_10	data files (.dta) from Ward	NA	NA
wrg09_10	data files (.dta) from Ward	NA	NA
16428589_1_Sterling - List of Dunleavy_Sady publications	Dunleavy Publications	NA	
prelim H D statistics based on KL output	Preliminary statistics from Dunleavy & Sady	NA	
SJI 01305268_Jock v Sterling - Oct 21, 2013	Billing statement from DCI Consulting	1-3	SJI01305268-5270
SJI 01305271_JockVSterling 3591	Billing statement from DCI Consulting	1-2	SJI01305271-5272
SJI 01305273_JockVSterling 3668	Billing statement from DCI Consulting	1-3	SJI01305273-5275
SJI 01305276_JockVSterling 3724	Billing statement from DCI Consulting	1-2	SJI01305276-5277
crsales_perf.do	.DO file from Ward	NA	NA

Electronic File Name	Document Name or Description	Pages	Bates #
crsales_perf.doc	Word file of syntax from Ward report from Ward	NA	NA
SJI 01305278_CONFIDENTIAL_AEO_Dunleavy report_DRAFT sterling report 091	DRAFT Expert Report of Drs. Eric Dunleavy and Kayo Sady	1-44	SJI 01305278-5321
1761323-Eric Dunleavy-1.pdf	Deposition of Eric Dunleavy	1-243	
1761323-Eric Dunleavy-1.txt	Deposition of Eric Dunleavy (Txt version)	NA	
1761323-Eric Dunleavy-1.ptx	Deposition of Eric Dunleavy (PTX version)	NA	
dunleavy depo exhibits	Exhibits to Dunleavy Deposition (list)	NA	
131218_rough.pdf	Deposition of Dr. Ward (PDF Version)	1-346	
131218ver_rough.txt	Deposition of Dr. Ward (txt Version)	NA	
251837	Email regarding Merit exception requests	1-2	SJI 251837-838
385081	Email regarding Merit exception requests	1-2	SJI 385081-082
1761322-Michael Ward-1	Deposition of Dr. Ward (PDF Version)	1-377	
Stockdale depo transcript 120313	Deposition of Margaret S. Stockdale	1-256	
Scan1	Letter to Seller re: Sady's deposition	1	
721432-Pay Practices Cover Email	Email regarding summary highlights-green hat session	1	SJI 00721432
721433-Pay Practices Discussion	Summary Highlights: Pay Practices Discussion (5/24/06)	1	SJI 00721433
SJI 01255975_CONFIDENTIAL_New Hire Wage vs Performance	Spreadsheet indicating new hire wages vs. performance	NA	SJI 01255975
SJI 00214591	Email re: Figuring % to pay goal	1-3	SJI00214591-593
SJI 00252713	Email re: Merit exception requests	1-3	SJI00252713-715
SJI 00370349	Email re: Percent to pay calculator	1-3	SJI00370349-351

ATTACHMENT B

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