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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **IN AND FOR THE COUNTY OF CLARK**

9 STATE OF WASHINGTON,) No. 18-1-01096-9
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11 Plaintiff,)
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13 vs.)
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1 **I. DECLARATION**

2 1. I, Olga Fisenko, state and declare that I am over the age of 18 and make the following
3 statements upon information and belief.

4 2. Vladimir Nikolenko is my brother. I was called as a witness to testify by the State and
5 by the defense in the trial for this case.

6 3. I met with Vladimir's attorney, Bob Vukanovich, several times prior to my witness
7 interview on August 3, 2022. Each time I informed him that the alleged victim, Flor Torres,
8 was my former employee and that she was trying to hurt me by making these allegations
9 against my brother Vladimir. I explained that this case was about me and not Vladimir. I had a
10 big binder with the information that I wanted to show Mr. Vukanovich, but he indicated that

1 this case was not about Flor's employment with me. He would not go through all of the binder
2 with me. The following is a summary of the issues I was having with Flor.

3 a. The waiting period to receive the results of a typical background check would
4 have only taken up to two days. I agreed to hire Flor despite her theft charge because
5 she had stated on the application that she had met the one-year probational term of the
6 diversion program and because of her explanation of the details surrounding her
7 charge, in which she presented herself to be innocent. I never anticipated the delay in
8 the background check process, but due to Flor's repeated misguidance on her form, the
9 process took an entire 43 days. On June 27, 2016, over six weeks later, I was shocked
10 when I read that the results concluded her offense to be a disqualifying factor. I
11 immediately took the time to meet with Flor. I told her that she could not stay
12 employed. However, upon seeing her emotional plea and upon carefully listening to
13 her recount the details surrounding the offense, I explained that I would need to think
14 about my decision. Unfortunately, I mistakenly understood the guideline to read that I
15 could hire her at my discretion. Upon agreeing to give her a chance, even though she
16 explained that her niece committed the crime by placing the items into her purse, I
17 took precautions to make sure that there would never be a possibility for items to be
18 stolen from the residents, and we both verbally agreed that she would not carry a purse
19 to work, but instead would only use a clear bag for her lunch. *See* "Appendix A".

20 b. Ms. Torres' attitude and demeanor had gradually declined since July of 2016.
21 She was taking more frequent breaks for a longer amount of time than she was
22 supposed to and often she was not listing her breaks on her work notes at all. On
23 August 2, 2016 I had a pre-evaluation meeting with Flor because many things were
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1 not being done correctly by her at work and I wanted to address every issue
2 individually. Flor signed this pre-evaluation on August 11, 2016. By August 16 she
3 went through all forms, instructions and qualifications Employee orientation of 5 Star
4 Adult Family Home and sign them too. See "Appendix B". This was my attempt to
5 help her understand what was expected. Unfortunately, instead of seeing
6 improvements, Flor was still not performing professionally in September and October
7 2016. Many times, she was coming in late and leaving earlier or later than when her
8 schedule was 7:00AM to 12:00/1:00/2:00PM. She stopped filling out daily work notes
9 and had become more disrespectful. She was talking on her cell phone with her friends
10 or family in Spanish while helping the residents. She had been informed, and signed
11 an evaluation, to speak on the phone for personal calls without residents being present
12 on her break because it confused the residents and made them uncomfortable, and her
13 tasks were not being done correctly. Flor started to spend more time with residents in
14 their room without a reason. She was getting less work done and she did not like it
15 when I made some corrections or provided any new information to her regarding the
16 residents' care or work corrections. She was telling me that I made her work so hard
17 that she had no time to take a break. We only had three residents at the time to have
18 light care for. In my opinion, there was no valid reason why she would not be able to
19 have adequate time to take a work break.

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23 c. Flor's inadequacies as an employee included her disrespect both towards the
24 residents and me and included her dishonest work ethic. Because of all of the issues
25 that I was having with Flor, sometime in October, I advised Flor to begin seeking
26 alternate employment. Flor responded with a threat, stating that she has family
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1 employed by the state, who would help her retaliate against me for letting her go. In
2 light of her threat, as of November 5, 2016, I purposefully implemented in her
3 November and December time sheets three new columns for Flor to document her
4 break time, her lunch time, and a daily rating log rating how her workday was on a
5 scale of '1' to '5'. I also wrote down an addendum regarding clear bag for lunch as we
6 were verbally agreed in the beginning and I asked Flor to write out her explanation of
7 the theft charge to apply to her employment records. Our lunch and work break policy
8 was signed by Flor on November 5, 2016 even though that was already included on
9 her previous daily work notes. I wanted to ensure that I was in compliance with all
10 regulations in the case that she followed through with her threat to retaliate.

11
12 Ultimately, we agreed that I would allow her to continue working until December.
13 However, in late November, Flor again asked me to delay her termination, explaining
14 that she was unsuccessful in finding alternate employment. Even though Flor's
15 unprofessional behavior continued in November 2016, I still agreed to allow her to
16 stay employed through the end of January 2017.

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18 d. On November 23, 2016 I noticed on Flor's time sheet that on November 8, 9,
19 10, 11, and 12 she listed ratings of '5', then on November 16, 17, 19, and 21 her score
20 ratings went down. I asked her to provide me a written explanation for the days that
21 she considered to be her worst. Flor wrote about November 17 - daily rating score of
22 2. She was unhappy that I asked her to leave work fifteen minutes early even though
23 she signed off at 1:00PM, not 12:45PM. Regarding November 21 - daily rating score
24 of 1, she indicated she was unhappy because I had asked about her lunch when she
25 was not using a clear bag for her lunch as it was verbally agreed on at the beginning of
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1 Flor's employment and also just signed addendum on November 5, 2016. Because in
2 December 2016 Flor listed ratings of '5' every day, and have had almost always
3 checked 10-minute break, I did not continue this chart for January 2017. In December
4 2016 and January 2017, Flor was still consistently coming in late and her out time was
5 inaccurate. In my twenty years of doing caregiving and employing approximately
6 thirty plus people during that time, I have never had problems with any employee like
7 I had with Flor. *See* "Appendix C" (time sheets, addendum, Flor note explanations on
8 November 17 and 21, 2016).

10 e. On January 17 and 18, 2017, I received a text message from Flor before her
11 shift, informing me that she and her baby were ill. *See* "Appendix D". Despite telling
12 her to stay home, Flor showed up as I was finishing breakfast for the residents. I
13 explained to her that she was just very ill and I do not want our residents exposed to
14 that illness, and that her shift was covered, but she continued to ask to work that day,
15 saying "I am your only employee!" Seeing that I was still refusing to let her work, she
16 demanded her paycheck. I explained that I was unable to leave the residents to give it
17 to her at that time. On her way out, she mentioned something about my brother and
18 going to her family counselor. I was confused by her comment about my brother and
19 her family counselor.

22 f. The same day on January 18, 2017, Flor's paycheck along with a written
23 request for her to outline her issues with my brother was delivered to her residence.
24 Although I had previously agreed to allow Flor to work through the end of January,
25 considering the change in circumstances, I notified Flor in the letter that her
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1 employment would be adjusted to an on-call status for the remainder of the month. *See*
2 “Appendix D”.

3 g. The very next morning, on January 19, 2017 at 10:34AM, Flor filed a DSHS
4 complaint (#3311611) about my adult family home, claiming that I had left the
5 residents unattended at my instruction because I could not afford to pay her. *See*
6 “Appendix E”. Her second complaint (on or about January 23, 2017) alleged that my
7 residents were neglected. Lastly, on or about January 26, 2017, Flor’s counselor Harris
8 reported a complaint to DSHS (intake ID: 3313165). On February 1, 2017 the
9 Department of Health sent me a letter regarding her complaint alleging that I
10 committed “unprofessional conduct”. The referring and investigating agencies
11 concluded all of these complaints to be unfounded and the only disciplinary citation
12 that I received was for having hired Flor. They noted that Flor was convicted of a
13 three-year disqualifying offense until November 5, 2018. I believe this explains why
14 Flor was constantly pressuring me to keep her employed and also revealed that she
15 had been dishonest about her conviction in her initial application for hire.
16

17 h. On January 20, 2017, I received a text message from Flor alleging that my
18 brother had molested her the last time that he had visited. This was the first time that I
19 was made aware of this allegation. *See* “Appendix F”.

20 4. Despite my explanations, Mr. Vukonovich failed to believe that my former employee
21 was making these false allegations against Vladimir to hurt me. From my big binder about
22 Flor as an employee and DSHS complaints that I had available at all of our appointments, Mr.
23 Vukanovich chose about twenty plus pages and his secretary made copies. The following are
24 items that Mr. Vukanovich chose to place to the file: *See* “Appendix G”
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- a. Flor's background check information 05/11/2016
- b. Not final Disqualifying Information from State
- c. Flor's November timesheet
- d. Flor's Explanation about "Bad days" 11/17/2016-11/21/2016
- e. Flor's December timesheet
- f. Olga's Letter to Flor dated 01/18/2017
- g. Letter from Department of Health dated 02/01/2017
- h. Olga's home pictures

5. As a part of Flor's employment, she was required to write a paragraph of daily observation of each resident, especially if somethings unusual noted. This journal note is for resident Richard Lander and there is nothing noted or specially notes at all. There is also a bathing schedule for residents for November 2016. Flor gave a shower to Mr. Lander on November 28 not on November 30. *See* "Appendix H".

6. On or about August 20, 2022, Mr. Vukanovich gave Vladimir a copy of the police report, which I started to read right away. I was very upset with Officer Anderson's report. He had misleading statements in his report where he reported: "Olga confirmed significant parts of Flor's statement". The only information I verified with law enforcement was that my brother was in my home and that Flor was also at work. It was not clarified that Vladimir visited my home on two separate occasions in November 2016. Vladimir was at our home for about four or five days from around November 10, 2016 to November 14, 2016. During those days, Flor was working in the mornings at the same home and she indicated a rating of '5' for those days. Attached is a true and accurate depiction of a photo that was taken on November 11, 2016 for Vladimir's birthday party. *See* "Appendix I".

1 a. On the morning of November 11, 2016, which was Vladimir's birthday, I was
2 helping Vladimir make sewing alterations to his pants. I received a page from Flor
3 requesting urgent assistance with showering a resident in room #3. *See* "Appendix H"
4 for reference. Responding to the urgent message, I asked Vladimir, who was dressed
5 in a robe, to hold onto the pants and to wait for me in the living room outside of the
6 resident's room. After providing Flor aid to resident, I opened the door for her because
7 Flor's hands were filled with the dirty laundry, as we exited the resident's room. That
8 is the exact time that Vladimir was describing during his interview with Officer
9 Anderson when Flor saw Vladimir holding his pants and he was appropriately dressed
10 in a robe. Vladimir and I went downstairs to finish making the alterations to his pants.
11 During the police report, Officer Anderson asked whether I had ever witnessed Mr.
12 Nikolenko with his pants either off or pulled down, at any time when he was in the
13 living room. I answered "no." He then asked if I might have ever seen him do
14 anything that might have looked as if he was changing his pants. Again, I answered
15 "no." Despite stating clearly in two different ways, that his pants were neither off, nor
16 were they ever pulled down, Officer Anderson incorrectly documented in the report
17 that I did not know whether he might have been changing his pants. When Officer
18 Anderson asked me whether I had witnessed Mr. Nikolenko walking around the house
19 with a knife, I explained to him the event of the next morning that I recalled seeing
20 Vladimir with anything that looked like a knife. Although I did not know the term
21 "carving fork," I was able to clearly show to them using two fingers to depict the
22 carving fork. I told Officer Anderson that I saw Vladimir ascend the stairs from the
23 basement to visit with his father (as he were living in my adult family home for the
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1 last two month and passed away here on November 25, 2016), when I noticed him
2 extending the drawstring from a pair of his father's pants that he was wearing. Using a
3 carving fork, he was picking at the knot in the drawstring. Because the knot was close
4 to his flesh, I told him to hold the carving fork down, away from himself, because I
5 was worried that he could accidentally poke himself as he walked. Seeing that he was
6 topless, I asked him to return to the basement to dress himself to look nice and
7 presentable for the day. As I took the carving fork, I told him I would help him untie
8 the knot afterwards. On the first floor, I met Flor at the top of the landing. Because I
9 was unsure whether she had seen him without a shirt, I apologized and excused him,
10 explaining that he has suffered from mental illness ever since his divorce. Officer
11 Anderson did not include my account of this incident in his police report as my
12 explanation of the carving fork clearly did not support Flor's allegation.
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15 b. During my witness interview, Mr. Gasperino asked whether I had seen
16 Vladimir in the living room, sitting in a chair "playing" with his pants. Answering
17 "no" to his question, upon Mr. Teply's prompting, Mr. Vukonovich disagreed and said
18 that he remembered me stating in a police report that I had seen Vladimir "playing
19 with his pants." I again answered "no." After being asked twice about Vladimir
20 "playing" with his pants, Mr. Vukonovich read directly from the police report. This
21 time, changing the wording from "playing" to "doing something with the waistband of
22 his pants as they did not seem to fit well... possibly changing his pants." I respond by
23 saying that this too is a lie because never had I stated that there was the possibility of
24 him changing his pants in the living room.
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1 7. On August 23, 2022, Vladimir and I again met with Mr. Vukanovich to discuss the
2 prosecutor's offer. Mr. Vukanovich recommended that Vladimir accept the prosecutor's offer.
3 I told Mr. Vukanovich that these allegations were all lies, but he indicated that a large number
4 of people in jail are not guilty. After Vladimir declined the offer, I explained that there was
5 insufficient evidence to prove Vladimir's innocence. I said that all we needed was more time
6 for preparation for trial. We also notified him that we were looking to hire a lawyer, but he
7 declined to request a continuance.
8

9 8. On Saturday, August 27, 2022, my sister Luba Kee flew from Colorado to attend
10 Vladimir's trial. That evening when Luba was reading information about the case, she brought
11 it to my attention that the alleged incident occurred after Thanksgiving. I didn't know that
12 Flor's allegation was about November 30, 2016 because I was not aware of that information
13 previously. I just heard from the officer investigating the case when he interviewed me that
14 this was about November 2016, generally. Officer Anderson had asked me about Vladimir
15 with a knife, but that was regarding Vladimir fixing his pants when he was visiting on
16 November 11, 2016. When both of us realized that, I immediately texted Vladimir's daughter,
17 Ludmila Nikolenko, to ask if she could provide a copy of Vladimir's bus ticket and shortly
18 after she texted and emailed to me it. The ticket showed that Vladimir's bus departed from
19 Seattle on November 29, 2016 at 12:30PM and was scheduled to arrive in Portland at 3:45PM
20 that day. I pulled out my 2016 storage file and checked my credit card records to see what
21 airline we flew on to Colorado. I found out it was Frontier Airlines, so I called that airline and
22 they told me over the phone that our flight departed on November 30, 2016 at 10:20AM.
23

24 9. After Thanksgiving 2016, Vladimir visited my home only once. He arrived on the
25 evening of November 29th, so that we could travel together with my husband to attend our
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1 father, Vasiliy Nikolenko's, funeral in Colorado. On November 30th, my daughter Marina
2 came to my home at 6:00AM so that I could show her all of the duties that she would need to
3 perform while I was away. We both greeted Flor as she entered through the kitchen back door
4 to begin her shift (7:05AM). Flor gave a shower to Richard on November 28th not the 30th.
5 Vladimir was not present on the first floor, as he was staying in the basement and was with
6 my husband. Mourning the loss of his beloved father, Vladimir was in a somber mood and my
7 husband spent his time consoling him. We left to the airport on November 30, 2016 before
8 9:00AM, due to our flight departure at 10:20AM.

10 10. The morning of the first day of Vladimir's trial, my sister Luba Kee, gave Mr.
11 Vukanovich the information about Vladimir's bus ride and a copy of my credit card showing
12 the flight that was purchased. Mr. Vukanovich indicated that it was too late to admit this
13 information and he did not request a continuance. After the trial, I was able to obtain a
14 printout from Frontier Airlines that showed that Vladimir, myself, and my husband were on
15 this flight. *See* "Appendix J". Before my witness testimony, I was informed by Mr.
16 Vukanovich to say only "yes" or "no" in response to questions. During my testimony, I
17 testified that my brother Vladimir was in my home less than two hours on November 30th.

18 11. The second day of trial, Vladimir told Mr. Vukanovich that he would testify in his trial
19 when we met with Mr. Vukanovich outside of the courtroom. Mr. Vukanovich recommended
20 against it. I told Mr. Vukanovich that Vladimir was capable of testifying. We all were
21 assuming that Vladimir would have an opportunity to testify. During the last day of trial and
22 before closing arguments, Vladimir asked why he was not called to testify in his own trial. He
23 was shocked because he was expecting to be called as a witness.
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3 I declare under penalty of perjury pursuant to the laws of the state of Washington that the
4 foregoing is true and correct.
5

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7 Signed this ____ day of _____, 2022 in _____, WA.
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10 _____
Olga Fisenko
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