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BEFORE THE AMERICAN ARBITRATION ASSOCIATION

EMMANUEL D. KEPAS,	:	
	:	DECLARATION OF CLINTON
Claimant,	:	ERICSON
	:	
v.	:	
	:	Case No. 77 460 00465 06
EBAY, INC., a Delaware Corporation	:	
	:	
Respondent.	:	
	:	

STATE OF UTAH }
 :
SALT LAKE COUNTY }

1. I am a resident of Sandy, Utah; over the age of 18; and provide this affidavit based on my own personal knowledge and expertise.
2. I worked for eBay for a period of seven years. I was employed in eWatch during the entire time that Emmanuel Kepas was also employed there. I am no longer employed by eBay, my last day of work being June 13, 2007.
3. On July 12, 2007, I gave 3-weeks notice that I would be terminating my employment to take another job. The next day I was asked to leave and given a severance.

Before I left my supervisor, Jason Hughes told me that Susan wanted me “gone” and that I needed to turn in my laptop immediately and most likely it would be formatted as soon as it was turned into the IT department. I requested to be able to save some personal files from the computer. Mr. Hughes permitted me a few minutes to do so. I copied as many of my personal files as I could and placed them on a portable hard drive.

4. During the time that I was employed at eBay, for a period from mid 2004 until February 2005, Mr. Kepas was the eWatch Manager and my direct supervisor. In February 2005, Mr. Kepas was demoted and Susan Dutton was employed as a manager in the eWatch Department and was either my direct supervisor or the supervisor of my direct supervisor until I left eBay.

5. After Mr. Kepas was demoted, I often attended one-on-one meetings with Ms. Dutton wherein she was supposed to discuss my performance with me.

6. Ms. Dutton frequently spoke about her boyfriend during these one-on-one sessions. During one of these sessions, she told me that her boyfriend had been on the Internet looking at porn and she suspected that he was sleeping with other women. She also told me that she broke up with her boyfriend because of this and that she had been invited to appear on the Judge Judy court television show to “rake him over the coals”.

7. In early January 2006, Ms. Dutton came onto the eWatch floor and declared in a voice loud enough for the entire team to hear that she had “hurt her back in a circle jerk” that morning. When she said it, she laughed with an expression on her face from which I inferred that she clearly understood what the meaning of the term “circle jerk” was. After her initial declaration, she then explained that she had hurt it in an exercise called a circle jerk that she had participated in in an exercise program that was called Bootcamp. From her tone,

expression, and demeanor, it was clear to me that Ms. Dutton knew that circle jerk had a sexual connotation and that she intended to shock those who heard her first sentence.

8. Ms. Dutton often wore suggestive clothing to work. In fact, on at least two occasions, I witnessed Human Resources coming over to talk to her and afterwards, Susan left work and returned in different clothing.

9. Ms. Dutton frequently spoke about her breast implants and told me how her son had told her she was all “fake”. Fake hair, fake face, fake breasts and that everything about her was fake. I didn’t feel this was appropriate conversation for the workplace.

10. Ms. Dutton also frequently told me about her son’s legal problems and that he had been arrested for drugs and she had to keep leaving work to “bail him out” or attend court or pay fines for him so he would stay out of jail. She also told me that she kicked him out of her house because he had friends over doing drugs and that he had impregnated his girlfriend.

11. After Mr. Kepas took leave from work, I spoke with Jason Hughes about the circumstances of his leaving. In one conversation, Mr. Hughes told me that just prior to Mr. Kepas’ leaving, Susan Dutton told him to watch what Mr. Kepas was doing and report back to her on his activities.

12. Several months after Mr. Kepas was no longer working at eWatch, I was asked to give an interview with the lawyer representing eBay in the claims brought by Mr. Kepas against eBay. The day before I was scheduled to speak with the lawyer, Ms. Dutton gave me a \$500 eBay check and said, “I want you to be open and honest with the lawyer.” Her demeanor and attitude in giving me the check suggested that she wanted me to speak favorably of her and to shade my answers. Additionally, she did not identify the basis for the \$500 check although she said it was for a bonus. I believed that Ms. Dutton was attempting to bribe me to testify in

her favor since she would normally present any kind of performance bonuses in a team meeting or announce it to the team and it was clear she wanted to keep this low-key.

13. I spoke with the lawyer. During my conversation with the lawyer, I explained that I would testify that Ms. Dutton had, in fact, been harassing me and I wouldn't be any help for their side of the case. The next day Ms. Dutton pulled me into a conference room and told me that she "had received feedback from Jason Hughes" and that she would have to counsel me. On a later occasion, she told me, in a during my 2007 annual review of my performance that she was marking me down on my eBay Behaviors ratings because I "went to HR" about her treatment of me. When I confronted her about that statement, she said no one would believe me.

14. I reported my concerns to Janna Heitland in Human Resources on several occasions. I interviewed with Ms. Heitland in the HR offices regarding the complaints, but there was never any reprieve from the harassment I was receiving, rather it got worse. After my annual review with Susan, I met with Ms. Heitland 10 minutes later and told her about the retaliation statement that Susan had made minutes earlier. Ms. Heitland appeared to brush it off. When I confronted Ms. Heitland that I didn't think anything was being done, she told me that she couldn't tell me what had been done, but the resolution from HR was always that everything Ms. Dutton had done was within her managerial authority and on one occasion, she suggested that I was becoming paranoid.

15. Ms. Dutton always kept my "personnel file" locked up and wouldn't let anyone look at it, including me. When I suggested to Ms. Heitland that she wouldn't let me look at my own file and I felt I had a right to view the contents of it, Ms. Dutton showed me the notes she had taken during our last one-on-one session. The notes were not handwritten as she had taken

them, but typed up. The contents of these “notes” were half-truths and contained contradictory statements to what was actually discussed. She never turned my file over to Jason Hughes once HR removed me from her direct supervision nor would she allow Jason to view the contents.

16. Ms. Dutton often made contradictory statements either via email or “her notes”. On several occasions, I was following instructions that were mutually agreed upon and she would then change the agreement at a later time during a counseling session. Her notes always trumped mine when I would report the inconsistency to Janna Heitland in HR. On one documented occasion, Ms. Dutton had instructed me via email to contact Jason Hughes in her absence. Ms. Dutton was in court with her son one Friday when there was a departmental Christmas Party that was supposed to last the entire afternoon. The party got out early and I called Jason Hughes, asked if Susan was there, he told me no. I then told him the Christmas party had just concluded and asked him if he needed me to come back into the office. He told me no, everything was under control. The next Monday I was counseled by Susan for not calling her to tell me the party was over and that she had expected me to call her even though she was out of the office that afternoon. I forwarded her email thread about the incident to Janna Heitland in HR and the next day, Susan was upset because I “kept going to HR.” There were several occasions where I asked for Mr. Hughes to be present in our one-on-ones so I could bring up instances with a witness and she would always change her demeanor and tell me I was welcome to contact HR. Then became visibly upset when I told her that I had an appointment with HR just 15 minutes after the current discussion. On several occasions, including where Jason was present, she would badger me on issues until I was too upset to even speak.

17. Jason Hughes confirmed that she was indeed trying to fire me but he was not allowing her to “make up stuff” about me to do so.

18. When I was offered a severance package by Jason Hughes on Wednesday, June 13, 2007, Susan had left that day to travel to the eBay Convention and had told Jason that she “wanted me gone” by the time she got back from eBay Live in Boston and I was NOT to be rehirable. I initially declined the offer because I had several of my job responsibilities I wanted to ensure were turned over properly before my departure and I had given notice that my last day would be June 30, 2007. Jason told me it would just make things worse and they would handle it and I should leave. Under the provisions of my severance, I was to receive full pay and benefits through the end of the month as well as my 2nd Quarter bonus and I would also retain all accrued PTO to be cashed out upon severance. I spoke with Jason later and he informed me that Susan tried to lower my quarterly scores to a 2 in order to not allow me to be rehirable at eBay and also lose my quarterly bonus. The reason for this was apparently “dumping my job responsibilities”. Jason told me that he told her she couldn’t do that and was not going to allow it. I was not officially terminated until July 5, 2007 and I believe Susan was holding off on this to either find a way to terminate me under unfavorable circumstances or to simply delay my final severance pay check as she knew I needed the money.

I DECLARE UNDER CRIMINAL PENALTY OF THE STATE OF UTAH THAT THE FOREGOING IS TRUE AND CORRECT.

Executed this 3rd day of May, 2008.



Clinton Ericson