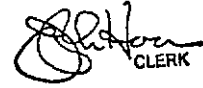


UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
NOV 30 2006


CLERK

CHRISTOPHER A. ROLLER,

Plaintiff,

Vs.

GE MEDICAL SYSTEMS INFORMATION
TECHNOLOGIES, INC.,

Defendant.

Civ. 06-04098

**DEFENDANT'S REPLIES TO
PLAINTIFF'S RESPONSES TO
DEFENDANT'S STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Defendant GE Medical Systems Information Technologies, Inc. ("GEMS IT") submits the following reply to its Statement of Undisputed Material Facts in support of its Motion for Summary Judgment.

I. SUBJECT MATTER JURISDICTION

1. **This Court has subject matter jurisdiction over this action under 28**

U.S.C. § 1332 (diversity jurisdiction with an amount in controversy of over \$75,000).

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

II. VENUE

2. **Roller initially filed his Complaint in Minnesota state court. (Affidavit of**

Judith A. Williams-Killackey ("Williams Aff.") ¶ 5.)

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

3. **GEMS IT removed the action to the U.S. District Court for the District of Minnesota pursuant to 28 U.S.C. § 1441. (Williams Aff. ¶ 5.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

4. **Upon GEMS IT's motion, the District of Minnesota transferred this matter to the District of South Dakota, Southern Division pursuant to 28 U.S.C. § 1404(a). (Williams Aff. ¶ 6.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

5. **This district is a proper venue for this action under 28 U.S.C. §§ 1391 and 1404(a). (Williams Aff. ¶ 6.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

III. GEMS IT AND ROLLER'S EMPLOYMENT

6. **GEMS IT provides hospitals and healthcare systems with advanced solutions to improve their clinical performance. (Affidavit of Robert E. Moore ("Moore Aff.") ¶ 4.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

7. **GEMS IT operates several facilities, including one in Sioux Falls, South Dakota. (Moore Aff. ¶ 4.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

8. **Roller was hired on or about July 19, 1999 by Micro Medical Systems, Inc. in Sioux Falls, South Dakota. (Deposition of Christopher Roller, July 11, 2006 ("Roller Dep.") p. 61.)¹**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

9. **Rich Adcock, part owner of Micro Medical and Micro Medical's Vice President of Research and Development, located Roller through a recruiter in Minnesota and made the decision to hire Roller. (Roller Dep. p. 36, Exhibit ("Ex.") 3; Affidavit of Richard Adcock ("Adcock Aff.") ¶¶ 2-3.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

10. **GEMS IT acquired Micro Medical Systems, Inc. in September 2000, and Roller stayed on as a GEMS IT employee. (Adcock Aff. ¶ 8; Moore Aff. ¶ 5.)**

Plaintiff's Response: Admits.

¹ A true and correct copy of the Roller Deposition Transcript is attached to the Affidavit of Judith A. Williams-Killackey as Exhibit A.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

11. **While employed by GEMS IT, Roller worked as a Senior Engineer for the User Interface Group ; essentially, Roller was a software engineer for GEMS IT. (Roller Dep. pp. 38-40; Moore Aff. ¶ 6.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

12. **In early 2000, Robert ("Bob") Moore joined Micro Medical and became Roller's supervisor. (Roller Dep. p. 38; Moore Aff. ¶¶ 3, 9.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

13. **Moore supervised Roller for the remainder of Roller's employment with Micro Medical and GEMS IT. (Roller Dep. p. 38; Moore Aff. ¶¶ 3, 9.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

14. **Roller admits that he was able to perform his job as a Senior Engineer while working at Micro Medical and GEMS IT. (Roller Dep. pp. 42-43.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

15. Shortly after Roller began his employment with Micro Medical in 1999, Adcock received reports that Roller was telling co-workers that he was “the chosen one” and that he was “gifted.” (Adcock Aff. ¶ 5.)

Plaintiff’s Response: Admits.

Defendant’s Reply: No reply is necessary because Roller’s response does not attempt to dispute the proposed fact.

16. Roller also told several co-workers that he believed the CIA was after him because of his superior intellectual abilities and that he believed the movie “The Truman Show” was based on his life. (Roller Dep. pp. 61-65, Ex. 6; Adcock Aff. ¶ 7.)

Plaintiff’s Response: Admits.

Defendant’s Reply: No reply is necessary because Roller’s response does not attempt to dispute the proposed fact.

17. After several employees complained that Roller’s stories made them uncomfortable, Kelly Drake, Micro Medical’s Vice President of Administration and Human Resources, and Adcock met with Roller. (Adcock Aff. ¶¶ 5-7, Ex. A.)

Plaintiff’s Response: Admits.

Defendant’s Reply: No reply is necessary because Roller’s response does not attempt to dispute the proposed fact.

18. During the meeting with Drake and Adcock, Roller reported being in psychiatric treatment. (Roller Dep. p. 68; Adcock Aff. ¶ 7, Ex. A.)

Plaintiff’s Response: Admits.

Defendant’s Reply: No reply is necessary because Roller’s response does not attempt to dispute the proposed fact.

19. **Roller signed medical releases, and Drake sought information regarding Roller's treatment. (Roller Dep. pp. 68-69; Adcock Aff. ¶ 8.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

20. **When Drake and Adcock received Roller's medical records, they learned that Roller had been diagnosed with bipolar disorder. (Roller Dep. p. 68-70; Adcock Aff. ¶ 8, Ex. A.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

21. **Because Roller had not been disruptive, violent or insubordinate at work, Drake and Adcock concluded Roller was not a threat to other employees. (Adcock Aff. ¶ 8, Ex. A.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

22. **Drake and Adcock also did not believe that the condition prevented Roller from performing his job. (Adcock Aff. ¶ 8, Ex. A.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

23. **Roller continued to work for GEMS IT following his conversation with Drake and Adcock. (Roller Dep. p. 247; Adcock Aff. ¶ 8.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

24. **Roller never had any other conversation with Adcock or anyone else at Micro Medical or GEMS IT about his bipolar condition. (Roller Dep. p. 70; Adcock Aff. ¶ 8; Moore Aff. ¶ 27.)**

Plaintiff's Response: Incorrect - I talked with Noah Allard and Troy Wollman about my bi-polar and meds, and perhaps Nate Kruse briefly RollerAff. (Roller Aff. ¶5.)

Defendant's Reply: Roller testified that he never had another conversation with Adcock or anyone else about his bipolar condition. (Roller Dep. p. 70.) Further, Roller testified that only Bob Moore, Rich Adcock, Kelly Drake and Kristi Hensley knew he had a bipolar condition. (Roller Dep. pp. 235-36.) Roller also testified that he did not speak to anyone at Micro Medical about his medication. (Roller Dep. p. 72.) And, other than one conversation Roller had with Moore regarding some drowsiness caused by his medication in January or February of 2002, Roller never had any conversations with managers at Micro Medical or GEMS IT that related to medication. (Roller Dep. pp. 51, 125; Adcock Aff. ¶ 8; Moore Aff. ¶ 27.) Roller may not now recharacterize his deposition testimony because he does not like it. The fact remains undisputed. Even if this fact were disputed, it does not create a material issue of disputed fact relevant to Plaintiff's claim since Roller presents no evidence that Allard, Wollman or Kruse supervised him or that they were involved in the decision to terminate him.

25. **Other than one conversation that Roller had with Moore regarding some drowsiness caused by his medication in January or February of 2002, Roller never had any conversations with managers at Micro Medical or GEMS IT that related to medication. (Roller Dep. p. 51, 125; Adcock Aff. ¶ 8; Moore Aff. ¶ 27.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

26. **Roller also never spoke to anyone at Micro Medical or GEMS IT about his medication. (Roller Dep. p. 72.)**

Plaintiff's Response: Incorrect - I talked with Noah Allard and Troy Wollman about my bi-polar and meds, and perhaps Nate Kruse briefly RollerAff. (Roller Aff. ¶5)

Defendant's Reply: Roller testified at his deposition that he had only one conversation with Bob Moore regarding his medications and that took place in early 2002. (Roller Dep. pp. 125-26.) Roller further testified that he never spoke to anyone else about his medication and that only Drake, Adcock and Moore knew he was on medication. (Roller Dep. pp. 72, 125.) Roller may not now recharacterize his deposition testimony because he does not like it. The fact remains undisputed. Even if this fact were disputed, it does not create a material issue of disputed fact relevant to Plaintiff's claim since Roller presents no evidence that Allard, Wollman or Kruse supervised him or that they were involved in the decision to terminate him.

IV. EVENTS LEADING TO ROLLER'S DISCHARGE

27. **Initially, Roller was highly regarded as a programmer and was considered to be someone who could raise the level of the Company. (Adcock Aff. ¶ 4.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

28. **In his performance review for 2000, conducted by Moore, Roller received a performance code ranking of 2, the second highest ranking. (Roller Dep. Ex. 10; Moore Aff. ¶ 10-11.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

29. **In the 2000 performance review, Roller was asked to make himself more approachable, but was praised for his wealth of knowledge and "strong architectural design talent." (Id.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

30. **After GEMS IT acquired Micro Medical in September 2000, Roller's performance began to decline. (Adcock Aff. ¶ 13.)**

Plaintiff's Response: This also coincided with the poisoning and resulting heavy dose of Zyprexa I was on. (Roller Aff. ¶11) Still received a performance code of 2. (Roller Aff. ¶45)

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed.

31. **In particular, by late 2001/early 2002, Adcock received reports from Roller's software design team that Roller was not completing his design projects. (Adcock Aff. ¶ 14.)**

Plaintiff's Response: No one reported any performance problems to me until the meeting stated in 25 (Roller Aff. ¶14).

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed.

32. **Roller was simply no longer delivering services within the scope of his abilities, as demonstrated by his earlier work. (Adcock Aff. ¶ 14.)**

Plaintiff's Response: No one reported any performance problems to me until the meeting stated in 25 (Roller Aff. ¶14).

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed.

33. **On Roller's second evaluation, Moore highlighted problems with Roller's development as a programmer. (Moore Aff. ¶¶ 12-15, Ex. A.)**

Plaintiff's Response: 2nd evaluation was written after I was dismissed, and can be skewed to suit the defense needs, and should be ignored (Roller Aff. ¶46).

Defendant's Reply: Defendant objects to the evidence cited in support of Roller's response to this proposed fact as it lacks foundation. In particular, Roller's assertion that the second evaluation was written after he was dismissed does not appear to be based on his personal knowledge. In fact, Moore wrote the second evaluation before Roller's employment ended. (Supplemental Affidavit of Robert Moore ("Moore Supp. Aff.") ¶ 6.) However, Moore did not have the opportunity to present Roller with his second evaluation before Roller was placed on leave on or about February 18, 2002. (Moore Supp. Aff. ¶ 6.) In any event, the cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed. Even if this fact

were disputed, it does not create a material issue of disputed fact relevant to Plaintiff's claim since Roller was not terminated solely for a bad evaluation.

34. **Moore felt most of the work Roller was doing could be done by a more junior engineer and that, because of his position as the most senior engineer on the user interface team, Roller should be contributing to projects in more significant ways.**

(Moore Aff. ¶¶ 12-15, Ex. A.)

Plaintiff's Response: No one reported any performance problems to me until the meeting stated in 25 (Roller Aff. ¶14).

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed.

35. **In the second evaluation, Moore also noted that Roller seemed to have reached the "extent of his potential in his current role." (Moore Aff. ¶¶ 12-15, Ex. A.)**

Plaintiff's Response: 2nd evaluation was written after I was dismissed, and can be skewed to suit the defense needs, and should be ignored (Roller Aff. ¶46).

Defendant's Reply: Defendant objects to the evidence cited in support of Roller's response to this proposed fact as it lacks foundation. In particular, Roller's assertion that the second evaluation was written after he was dismissed does not appear to be based on his personal knowledge. In any event, the cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed. Even if this fact were disputed, it does not create a material issue of disputed fact relevant to Plaintiff's claim since Roller was not terminated solely for a bad evaluation.

36. **Roller does not disagree with Moore's assessment of his performance at the time of the second evaluation. (Roller Dep. p. 124.)**

Plaintiff's Response: Agreed; but I told Bob Moore middle/end of Jan. the reason for me lacking performance was the daily 20 mg of Zyprexa (drugs) I was on. (Roller Aff. ¶14)

Defendant's Reply: Roller admits the proposed fact. Additionally, Roller testified at his deposition that his discussion with Moore in February 2002 was about punctuality and that he never had any other conversations with Moore or Adcock regarding any alleged medical conditions or medication. (Roller Dep. pp. 124-26.) Roller also testified he was never told punctuality issues played a role in his termination. (Id. p. 126.)

37. **In addition to the issues with his performance, throughout his career Roller engaged in inappropriate behavior, which did not improve despite counseling from others. (Moore Aff. ¶¶ 16-25; Adcock Aff. ¶¶ 9-12.)**

Plaintiff's Response: Disagreed, there was no counseling for my joking behavior.(Roller Aff. ¶38, 45, 51) It was 15 months (before dismissal) since my last joking antic, after the fake poop gag backfired. (Roller Aff. ¶82)

Defendant's Reply: The cited evidence does not dispute the portion of the proposed fact which asserts that Roller engaged in inappropriate behavior. Therefore, this portion of the proposed fact should be deemed undisputed. Moreover, Roller testified that he was reprimanded following Jen DeJong's sexual harassment complaint. (Adcock Aff.¶¶ 9-10, Exs. B & C.) Adcock reprimanded Roller for leaving feces on a urinal in February 2001. (Roller Dep. pp. 117-18, 134; Adcock Aff. ¶ 11; Moore Aff. ¶ 18.) Roller was also reprimanded after he sent the kiddieporn e-mail to Moore. (Roller Dep. p. 57.) Roller may not now recharacterize his deposition testimony because he does not like it. The remainder of this proposed fact also remains undisputed.

38. **The first incident of inappropriate behavior occurred in September 1999, when Jennifer DeJong, one of Roller's female co-workers, complained that she was uncomfortable with several comments Roller had made to her. (Roller Dep. p. 74, Ex. 7; Adcock Aff. ¶ 9.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

39. **DeJong stated that Roller had asked her if she was ever in his dreams, that Roller asked to smell the flowers on her shirt, and that Roller once asked her if she could "put his cucumber in his mouth" while eating a cucumber. (Roller Dep. pp. 75-76.)**

Plaintiff's Response: I was eating a cucumber for lunch and it was in between (held) my legs while I typed. It looked bad, so I joked about it because she and Russ Knoepfel were reading x-rated jokes off the internet and that was the atmosphere. (Roller Dep pg 74.)

Defendant's Reply: The cited evidence does not dispute the portion of the proposed fact which explains what DeJong stated happened. Therefore, it should be deemed undisputed.

40. **Roller also asked DeJong to go out with him. (Roller Dep. p. 75; Adcock Aff. ¶ 10.)**

Plaintiff's Response: Asked her bowling one time so I could tell her www.mytrumanshow.com - not several times. She complained, and I didn't ask her out again. I only need one warning. (RollerDep pg 74-76.)

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed.

41. **Adcock and Drake met with Roller regarding DeJong's complaint.**

(Roller Dep. p. 76, Ex. 7; Adcock Aff. ¶ 10.)

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

42. **Roller admits he signed a form at that time in which he stated he would keep his remarks in line with GEMS IT's professional environment. (Roller Dep. pp. 76-78, Ex. 7; Adcock Aff. ¶ 10, Exs. B & C.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

43. **Adcock and Drake warned Roller that further inappropriate behavior could result in termination. (Roller Dep. p. 77, Ex. 7; Adcock Aff. ¶ 10.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

44. **Throughout his tenure with GEMS IT, Roller admittedly had a flare for "jokes" that were not appropriate for the workplace. (Roller Dep. pp. 55-56, 74-75, 97-99, 162-63; Moore Aff. ¶ 16; Deposition of Robert Moore ("Moore Dep.") p. 10.)²**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

² A true and correct copy of the Moore Deposition transcript is attached to the Affidavit of Judith A. Williams-Killackey as Exhibit C.

45. **For example, shortly after GEMS IT acquired Micro Medical, Roller left half-empty beer cans and fake vomit in a co-worker's work area. (Roller Dep. p. 133; Moore Aff. ¶ 17.)**

Plaintiff's Response: There was a half opened bag of potato chips on the table too :)

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed.

46. **In the summer of 2000, Roller left fake pieces of feces on the toilet rim in the men's room. (Roller Dep. pp. 133-34; Moore Aff. ¶ 18.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

47. **Roller played a similar joke in February 2001, when he left fake feces on a urinal during a period of building renovation, resulting in a contractor filing an official complaint with Adcock. (Roller Dep. pp. 117-18, 134; Adcock Aff. ¶ 11; Moore Aff. ¶ 18.)**

Plaintiff's Response: Occurred before 9Nov2000. (Roller Aff. ¶38)

Defendant's Reply: Roller does not deny that he left fake feces on a urinal. The precise timing of the incident is immaterial. In any event, Roller testified that he likely left fake feces in the men's room on more than one occasion. (Roller Dep. p. 135.) He also testified that the fake feces incident took place within one week of the kiddieporn e-mail, and it is undisputed that the kiddieporn e-mail was sent in early 2001. (Roller Dep. p. 57, 113-17; Moore Aff. ¶ 22.) Therefore, this fact should be deemed undisputed.

48. **Adcock reprimanded Roller for these pranks. (Roller Dep. pp. 57, 120; Adcock Aff. ¶¶ 11-12, Ex. D.)**

Plaintiff's Response: Reprimanded with a dirty look only (RollerDep pg 57). That's when I stopped joking around. (Roller Aff. ¶56)

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed.

49. **Roller also sent inappropriate e-mails to the Sioux Falls employees. (Roller Dep. p. 115; Moore Aff. ¶ 19.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

50. **One such e-mail asked co-workers to go to Rollers website -- www.ivote.com -- to take a survey, which included questions such as, "What is Chris' favorite position?," "What is Chris' favorite orifice?," and "What does Chris call out when he climaxes?" (Roller Dep. Ex. 8; Moore Aff. ¶ 20, Ex. B.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

51. **Roller also objected to GEMS IT's internet policies and sent an inappropriate e-mail to several co-workers challenging GEMS IT's internet policy and referencing the situation between President Clinton and Monica Lewinski. (Roller Dep. pp. 106-08, Ex. 9.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

52. In another February 2001 incident, Roller sent an e-mail to Bob Moore, Vice-President of Marketing for Cardiology stating, "Bob, thanks for the great links -- try this one -- www.kiddieporn.com." (Roller Dep. pp. 57, 113-17; Moore Aff. ¶ 22, Ex. D.)

Plaintiff's Response: We all joked around, although this one did back-fire horribly, I admit. Bob Moore told me he was getting emails from the other Bob Moore. He also kidded about kiddie porn on a number of joking occasions. I did the joke, but I got my material from Bob Moore. (MooreDep pg 11)

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed. Moreover, Moore's testimony on this point actually reads as follows:

Q: [by Roller] . . . Well, I usually get my -- anyways, I got my -- this kiddieporn.com, that phrase, from you. Do you agree?

A: [by Moore] I don't recall that.

(Moore Dep. p. 11.) Further, Local Rule 56.1(c) requires a challenge to an undisputed statement of fact to contain appropriate citations to the record. The unsupported statements within the response to this proposed fact should be disregarded.

53. Roller claimed he had misaddressed the e-mail and that the e-mail was actually intended for Bob Moore, Roller's supervisor at the Sioux Falls facility. (Roller Dep. Ex. 11; Moore Aff. ¶ 22.)

Plaintiff's Response: We all joked around, although this one did back-fire horribly, I admit. Bob Moore told me he was getting emails from the other Bob Moore. He also kidded about kiddie porn on a number of joking occasions. I did the joke, but I got my material from Bob Moore. (MooreDep pg 11)

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed. Moreover, Moore's testimony on this point actually reads as follows:

Q: [by Roller] . . . Well, I usually get my -- anyways, I got my -- this kiddieporn.com, that phrase, from you. Do you agree?

A: [by Moore] I don't recall that.

(Moore Dep. p. 11.) Further, Local Rule 56.1(c) requires a challenge to an undisputed statement of fact to contain appropriate citations to the record. The unsupported statements within the response to this proposed fact should be disregarded.

54. **Roller knew that sending the kiddieporn e-mail was inappropriate at the time he sent it. (Roller Dep. p. 115.)**

Plaintiff's Response: The joke was intended to be funny. I experiment with humor and this one back-fired. (RollerDep pg 97)

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed.

55. **Roller was reprimanded for this incident and signed a statement of acknowledgment. (Id. p. 57.)**

Plaintiff's Response: Incorrect. Reprimanded with a glaring look over my cubicle. Signed no document. (RollerDep pg 57)

Defendant's Reply: Roller testified that Adcock and Moore spoke with him about the kiddieporn e-mail and that he could tell both Adcock and Moore were not pleased with his behavior. (Roller Dep. pp. 57-58.) Roller may not now recharacterize his deposition testimony because he does not like it. The fact remains undisputed.

56. **Roller also became angry with his co-workers on several occasions, causing some co-workers to be concerned about their personal safety. (Moore Aff. ¶¶ 23-25.)**

Plaintiff's Response: I was not informed about feedback from any argument except from Kevin Impehoven - that's when I was dismissed. (Roller Aff. ¶¶ 15, 48-50)

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed.

57. **During the summer of 2001, Roller had to be removed from the Sioux Falls facility following an intense altercation in which Roller yelled at Rodney Kindt, a co-worker. (Roller Dep. pp. 93-95, 134; Moore Aff. ¶ 23.)**

Plaintiff's Response: It was not intense, just a 3 second argument to leave me alone and do his own job. It was the day I was let out of the cage following my poisoning and I was in a bad mood for nobody taking me serious. I was not removed, but asked to go home for the day. (Roller Aff. ¶42)

Defendant's Reply: The cited evidence does not dispute the proposed fact that an argument occurred. Therefore, it should be deemed undisputed. Moreover, whether the argument was "intense" or not is immaterial.

58. **Following that altercation, Roller was sent home for the rest of the day. (Roller Dep. p. 134; Moore Aff. ¶ 23.)**

Plaintiff's Response: It was not intense, just a 3 second argument to leave me alone and do his own job. It was the day I was let out of the cage following my poisoning and I was in a bad mood for nobody taking me serious. I was not removed, but asked to go home for the day. (Roller Aff. ¶ 42.)

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed.

59. **In October 2001, Roller also had an altercation with Bob Moore. (Roller Dep. p. 135; Moore Aff. ¶ 24.)**

Plaintiff's Response: Have absolutely no recollection of this, and I usually remember anything worth remembering, especially if it was heated. Probably didn't happen as Moore states. Moore won't even admit visiting me at Sioux Valley Hospital after the poisoning (Roller Aff. ¶9), so I wouldn't put much worth to his testimony. If Moore was concerned for his safety, he should've had me sign something indicating so, but there is no such document.

Defendant's Reply: Roller testified that it was possible he did have an altercation with Moore in which he accused Moore of being out to get him. (Roller Dep. p. 135.) Roller may not now recharacterize his deposition testimony because he does not like it. In any event, Roller's failure to recall the incident does not constitute evidence creating a genuine dispute of material fact. Further, Local Rule 56.1(c) requires a challenge to an undisputed statement of fact to contain appropriate citations to the record. Roller cites no record evidence that disputes the proposed fact. Therefore, it should be deemed undisputed.

60. **Moore was concerned for his personal safety following this exchange because Roller became so angry during the discussion. (Moore Aff. ¶ 24.)**

Plaintiff's Response: Have absolutely no recollection of this, and I usually remember anything worth remembering, especially if it was heated. Probably didn't happen as Moore states. Moore won't even admit visiting me at Sioux Valley Hospital after the poisoning (Roller Aff. ¶9), so I wouldn't put much worth to his testimony. If Moore was concerned for his safety, he should've had me sign something indicating so, but there is no such document.

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed.

61. **Roller had another heated exchange with a co-worker, Kevin Impecoven, on or about February 15, 2002, and Impecoven expressed concerns about his family's safety following this exchange. (Roller Dep. pp. 130, 132; Adcock Aff. ¶ 15; Moore Aff. ¶ 25; Moore Dep. pp. 4-5.)**

Plaintiff's Response: Not so heated/No big deal according to Noah Allard. (Roller Aff. ¶ 83.) A one second argument disagreeing with him during a meeting. Nobody told me of any safety concerns (Roller Aff. ¶ 17.) It was on 11 Feb 2002 (exactly), 7 days before the dismissal. (Roller Aff. ¶ 15.)

Defendant's Reply: The cited evidence does not dispute the proposed fact that an exchange occurred. Therefore, it should be deemed undisputed. Moreover, whether the argument was "heated" or not is immaterial.

62. **In addition, Impecoven reported shortly after the argument that Roller had tried to run him down while driving near the Sioux Falls facility entrance. (Roller Dep. p. 127; Adcock Aff. ¶ 15; Moore Aff. ¶ 26.)**

Plaintiff's Response: This is recent news not reported until recent documents.

(RollerDep. p. 132.) Didn't "run him down" Simple merging of my car into 57th street traffic.

Wasn't shortly after - it was a week later. (Roller Aff. ¶ 15.)

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed.

63. **Roller admitted that he merged close to Impecoven on the way to work and that Impecoven looked startled. (Roller Dep. p. 127.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

64. **Roller understood how Impecoven could have thought that Roller was trying to hit Impecoven's car. (Roller Dep. pp. 127, 132.)**

Plaintiff's Response: It was a hunch because nothing else made sense at the time. (Roller Aff. ¶ 84.)

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed.

65. **Because of Roller's ongoing performance concerns and because of his inappropriate workplace behavior, GEMS IT placed Roller on leave on or about February 18, 2002. (Roller Dep. p. 127; Adcock Aff. ¶ 15; Moore Aff. ¶ 26.)**

Plaintiff's Response: The only time I was told of performance problems was mid/late January, when I told Bob Moore the drugs were affecting me. (Roller Aff. ¶14) Placed on leave because of the argument with Kevin Impecoven and nothing else. The traffic merging was a recent development the defense finally fessed up to in (RollerDep pg. 132).

Defendant's Reply: Defendant objects to the evidence cited in support of Roller's response to this proposed fact as it lacks foundation. In particular, Roller's assertion that he was placed on leave because of the argument with Kevin Impecoven and nothing else does not appear to be based on his personal knowledge. In any event, the cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed.

66. **Roller remained on leave until April 17, 2002, when Adcock offered Roller a Separation Agreement & Release (“Agreement”). (Roller Dep. pp. 128-30, Ex. 13; Adcock Aff. ¶ 16.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

67. **Adcock decided to end Roller's employment because of both his declining performance and his inappropriate conduct, which had culminated in his attempting to physically harm Impecoven. (Adcock Aff. ¶¶ 16-17.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

68. **After receiving the Agreement, Roller spoke with at least one lawyer regarding potential litigation against GEMS IT based on termination of his employment. (Roller Dep. pp. 149-50.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

69. **Roller ultimately executed the Agreement on April 24, 2002. (Roller Dep. Ex. 13.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

70. **Pursuant to the Agreement, Roller released GEMS IT from "each and every claim, action or right of any sort, known or unknown, arising on or before the effective date of the Agreement." (Roller Dep. Ex. 13.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

71. **This release includes disability discrimination charges. (Roller Dep. Ex. 13.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

72. **In exchange for Roller's termination and his release of all claims against GEMS IT, GEMS IT paid Roller his current salary at regular intervals through July 26, 2002. (Roller Dep. pp. 145-47, Ex. 13.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

73. **GEMS IT also agreed to provide Roller with outplacement assistance until October 26, 2002. (Roller Dep. pp. 145-46, Ex. 13.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

74. **Roller understood that by signing the release, he was potentially foreclosing himself from pursuing any legal actions against GEMS IT related to his employment. (Roller Dep. p. 151.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

75. **Roller did not return any of the compensation he received pursuant to the Agreement when he initiated the present lawsuit. (Roller Dep. p. 147.)**

Plaintiff's Response: Give me \$1 billion and I'll return the compensation.

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, it should be deemed undisputed.

76. **Roller acknowledged that his workplace misconduct was uncommon at GEMS IT in Sioux Falls. (Roller Dep. p. 298.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

77. **Roller points to only one individual who allegedly received more favorable treatment -- Jason Hopkins. (Roller Dep. pp. 298-99.)**

Plaintiff's Response: Nobody fits my profile - no one else was a mentally ill bi-polar Jesus guy. Comparison is unfair. (Roller Aff. ¶57)

Defendant's Reply: The cited evidence does not dispute the proposed fact. Therefore, this fact should be deemed undisputed.

78. **Roller and Hopkins are not similarly situated -- Hopkins did not engage in the same workplace misconduct as Roller and did not have the same performance problems that Roller had during his employment with GEMS IT. (Moore Aff. ¶ 28.)**

Plaintiff's Response: Nobody fits my profile - no one else was a mentally ill bi-polar Jesus guy. Comparison is unfair. (Roller Aff. ¶57)

Defendant's Reply: The cited evidence does not dispute the proposed fact. Instead, Roller admits that nobody was similarly situated to him. Therefore, this fact should be deemed undisputed.

79. **No other employees at GEMS IT had employment histories similar to Roller's history. (Adcock Aff. ¶ 19; Moore Aff. ¶ 29.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

V. **POST-TERMINATION EVENTS AND ROLLER'S ALLEGED DISABILITY**

80. **Roller never filed a discrimination complaint with any administrative agency regarding his employment at, or separation from, GEMS IT. (Roller Dep. pp. 151-52.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

81. **However, on or about June 8, 2005 -- some three years after his separation from GEMS IT -- Roller filed suit against GEMS IT in Minnesota state court, alleging "discrimination for mental illness, resulting in loss of job." (Williams Aff. ¶ 5.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

82. **The Minnesota suit was the first complaint Roller had filed regarding his employment with GEMS IT. (Roller Dep. p. 151.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

83. **The basis for Roller's complaint is his alleged bipolar disorder. (Roller Dep. pp. 170-71.)**

Plaintiff's Response: Not just mental illness via bi-polar, but also Jesus-guy syndrome. (Roller Aff. ¶57)

Defendant's Reply: Roller admitted at his deposition that the only disability alleged in this case is bipolar disorder. (Roller Dep. pp. 170-71.) Roller may not now recharacterize his deposition testimony because he does not like it. The fact remains undisputed.

84. **Roller was first diagnosed as bipolar in April 1999. (Roller Dep. p. 171.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

85. **Roller has been hospitalized because of his condition on five sporadic, short occasions: (1) a 72- hour stay in April 1999 (just after being diagnosed with bipolar disorder), (2) a second 72-hour stay in June 1999, (3) a 72-hour stay in August 2000, (4) a week in November 2002, and (5) a 72-hour hold in late October 2004. (Roller Dep. pp. 171-72, 178, 214-16, 220, 227-28; Roller’s Response to GEMS IT’s First Set of Requests for Admission & Second Set of Interrogatories, Ex. A.)³**

Plaintiff’s Response: Admits.

Defendant’s Reply: No reply is necessary because Roller’s response does not attempt to dispute the proposed fact.

86. **Roller’s bipolar condition does not limit him in his life’s activities, although he less able to “joke around” while on his medication. (Roller Dep. p. 181.)**

Plaintiff’s Response: Admits.

Defendant’s Reply: No reply is necessary because Roller’s response does not attempt to dispute the proposed fact.

87. **Whether on or off the medication, Roller is able to care for himself and able to perform manual tasks. (Roller Dep. p. 172.)**

Plaintiff’s Response: Admits.

Defendant’s Reply: No reply is necessary because Roller’s response does not attempt to dispute the proposed fact.

88. **Roller’s condition does not limit his ability to learn, think or work, although some medications he was on in the past made these activities take a little longer. (Roller Dep. pp. 185-87.)**

³ A true and correct copy of Roller’s Response to GEMS IT’s First Set of Requests for Admission & Second Set of Interrogatories is attached to the Affidavit of Judith A. Williams-Killackey as Exhibit D.

Plaintiff's Response: 20 mg. of daily Zyprexa limited my performance and punctuality at work progress at GE, and they knew I was on these powerful drugs. (Roller Aff. ¶ 19.)

Defendant's Reply: Defendant objects to the evidence cited in support of Roller's response to this proposed fact as it lacks foundation. In particular, Roller is not competent to testify regarding how his medication affected him. In any event, Roller testified that his condition does not limit his ability to learn, think, or work. (Roller Dep. pp. 185-87.) Roller may not now recharacterize his deposition testimony because he does not like it. The fact remains undisputed.

89. **On the current medication, Roller's abilities to learn, think or work are nearly at a normal pace. (Roller Dep. p. 187.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

90. **Roller's bipolar disorder does not affect his ability to communicate. (Roller Dep. p. 188.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

91. **Roller is able to bathe and groom himself, eat and sleep without difficulty. (Roller Dep. pp. 188-89.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

92. **Roller's condition does not affect his ability to drive, run errands and do household chores, nor does it affect his ability to read. (Roller Dep. pp. 189-90.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

93. **Roller also lives by himself, pays his own bills and manages his own medications. (Roller Dep. pp. 190, 228-29.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

94. **Roller has represented himself in court on a number of matters, including the present lawsuit and his divorce, and no court has ever ruled that Roller is unable to understand his legal rights. (Roller Dep. pp. 226-30, 293-94.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

95. **Roller has represented himself throughout this litigation, including responding to motions and discovery, filing his own motions, promulgating his own discovery and taking his own depositions. (Williams Aff. ¶ 7.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

96. **Roller does not believe his bipolar condition limits him at all. (Roller Dep. p. 181.)**

Plaintiff's Response: My mental condition is not just bi-polar, but Jesus-false-prophet syndrome. (Roller Aff. ¶57) The combination severely hinders my ability to find a job and keep it. (Roller Aff. ¶86)

Defendant's Reply: Defendant objects to the evidence cited in support of Roller's response to this proposed fact as it lacks foundation. In particular, Roller is not competent to testify regarding whether it was his mental condition that in fact hindered his ability to find a job and keep it. In any event, Roller admitted at his deposition that his bipolar condition does not limit him in any way. (Roller Dep. p. 181.) Roller may not now recharacterize his deposition testimony because he does not like it. The fact remains undisputed.

VI. ROLLER'S UNDERSTANDING OF HIS LEGAL RIGHTS

97. **Roller regularly handles his own financial and legal matters. (Roller Dep. pp. 228-29.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

98. **He represented himself in his divorce and in a restraining order proceeding, among other cases, and no judge has indicated any concern regarding Roller's ability to represent himself. (Roller Dep. pp. 226, 229-30, 293-94.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

99. **Roller also represented himself in the sale of his home. (Roller Dep. p. 229.)**

Plaintiff's Response: Admits.

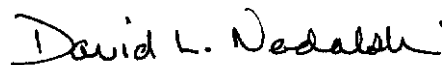
Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

100. **Roller has never been adjudicated insane by a court of law, nor has a court ever ruled that Roller is unable to understand his rights. (Roller Dep. pp. 226-29.)**

Plaintiff's Response: Admits.

Defendant's Reply: No reply is necessary because Roller's response does not attempt to dispute the proposed fact.

Respectfully submitted this 30th day of November, 2006.



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