

## **Case File**

### **Wang Ping v. Pinnacle Packaging Products, Inc.**

(Adapted by Pei Bei, Zou Jian, Song Yan, and Yu  
Qinya)

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## **Fact Summary**

On May 16<sup>th</sup>, 2008, Pinnacle Packaging Products, Inc. employed the claimant Wang Ping as a laborer working in its workshop. According to Pinnacle's regulations, the claimant shall have 60 days on probation. On June 30<sup>th</sup> of the same year, John Hamilton, the workshop manager, fired the claimant who alleged that she was fired because she resisted the advances of Hamilton. The claimant, therefore, filed an application for arbitration with the West Lake District Labor Dispute Arbitration Commission, Hangzhou City, claiming relevant losses and damages to be compensated by Pinnacle Packaging Products, Inc.

## **Application for Labor Dispute Arbitration**

CLAIMANT: WANG PING

Gender: female

Date of Birth: March 21<sup>st</sup>, 1986

Nationality: Han

Domicile: Room 402, Unit 3, No.888 of Tianmushan Road, Hangzhou

Tel: 137322890\*\*

RESPONDENT: Pinnacle Packaging Products, Inc.

Legal representative: Bryan Allen

Domicile: 3<sup>rd</sup> floor of Friendship Building, No. 5 of Wenyi Road,  
Hangzhou

Tel: 0571-288653\*\*

### **Arbitral Claims**

1. Respondent shall pay Claimant the amount of RMB Twenty  
Thousand yuan.

2. Respondent shall bear all costs arising from this arbitration.

## Facts and Reasons

On May 16<sup>th</sup>, 2008, Claimant was employed by Respondent to do the packaging job at the workshop. During the probation period, Claimant was repeatedly sexually harassed by the workshop manager, John Hamilton, causing her severe psychological disturbance. After rejected by Claimant, Hamilton, by taking advantage of his authority on personnel administration, unreasonably fired Claimant out of revenge during the probation period. Claimant thereby lost the job opportunity and thus suffered serious mental distress. As a result, Claimant hereby prays arbitrators to enter an award against Respondent that all Claimant's relevant losses and damages be compensated by Respondent.

To: West Lake District Labor Dispute Arbitration Commission, Hangzhou City

From: Wang Ping

Dated: July 8<sup>th</sup>, 2008

Enclosure: one copy of Employment Contract

## Statement of Defense

RESPONDENT: Pinnacle Packaging Products, Inc.

Domicile: 3<sup>rd</sup> floor of Friendship Building, No. 5 of Wenyi Road,  
Hangzhou

Tel: 0571-288653\*\*

Legal representative: Bryan Allen

Position: Chairman of Board of Directors

Attorney: Zhang Tao (lawyer from Hangzhou Tianming Law Firm,

License number: \*\*\*\*\*)

In answer to Claimant Wang Ping's Application for Arbitration,  
Respondent presents Statement of Defense as follows:

### Facts and Reasons

Respondent terminated the Employment Contract with Claimant on the  
following grounds:

1. Being repeatedly late for work and arbitrarily extending time for  
break without obtaining permission, Wang Ping materially breached  
Pinnacle's relevant rules and regulations and performed not dutifully at  
work.

2. Pinnacle had issued 3 pieces of Disciplinary Action (respectively

dated June 2<sup>nd</sup>, 11<sup>th</sup> and 27<sup>th</sup> of 2008, see Exhibit 1, 2 and 3) to Wang Ping to remind her of her unqualified work performance.

Since the aforesaid acts of Wang Ping violated Pinnacle's disciplines and regulations, Pinnacle issued the Notice on Termination of the Employment Contract (see Exhibit 4) on July 7<sup>th</sup>, 2008 and officially terminated the Employment Contract with Wang Ping. In the LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS, Article 21 provides that "An Employer shall not terminate the labor contract during the probation period unless the employee falls into any of the circumstances stipulated in Article 39 and paragraphs (1) and (2) of Article 40 of this law. If an Employer terminates a labor contract during the probation period, it shall explain the reasons to the employee", and Article 39 "An Employer may terminate the labor contract if the employee: (1) fails to meet the requirements for employment during the probation period; (2) materially breaches the Employer's rules and regulations;....."; furthermore, Article 27 of the REGULATION ON THE IMPLEMENTATION OF THE EMPLOYMENT CONTRACT LAW OF THE PEOPLE'S REPUBLIC OF CHINA provides that "During the probation period, where an employee's medical treatment period expires for an illness or a non-work-related injury, or where he is incompetent for his position, the employer may terminate the employment contract with him for the reason

of failing to meet the employment conditions”. In light of the above provisions, Pinnacle, with all justifications, might have immediately terminated the Employment Contract with Wang Ping. Instead, Pinnacle showed extreme forbearance in handling Wang Ping’s case, informing her three days in advance, which is actually not its obligation.

Pursuant to the LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS, the Pinnacle Employee Handbook and the Employment Contract signed by both parties, Respondent made the decision to dismiss Claimant before the expiration of probation, resulting from Claimant’s unqualified work performance. On all accounts, Pinnacle’s decision on this issue was lawful and appropriate with justifiable causes. Respondent hereby requests that the Arbitration Commission take into deliberation this statement of defense and dismiss all of the Claimant’s claims.

To: West Lake District Labor Dispute Arbitration Commission, Hangzhou City

Respondent: Pinnacle Packaging Products, Inc.

Dated: July 13<sup>th</sup>, 2008

Enclosure:

## Exhibits

Exhibit 1: Disciplinary Action Dated June 2<sup>nd</sup>, 2008

Exhibit 2: Disciplinary Action Dated June 11<sup>th</sup>, 2008

Exhibit 3: Disciplinary Action Dated June 27<sup>th</sup>, 2008

Exhibit 4: Notice on Termination of the Employment Contract

**Award by West Lake District Labor Dispute Arbitration**

**Commission,**

**Hangzhou City**

(2008) Hanglaozhongcai No. 701

CLAIMANT: WANG PING

Gender: female

Date of Birth: March 21<sup>st</sup>, 1986

Nationality: Han

Domicile: Room 402, Unit 3, No.888 of Tianmushan Road, Hangzhou

Tel: 137322890\*\*

Attorney: Zeng Xiaofan (lawyer from Hangzhou Moganshan Law Firm,

License number: \*\*\*\*\*)

RESPONDENT: Pinnacle Packaging Products, Inc.

Legal representative: Bryan Allen

Domicile: 3<sup>rd</sup> floor of Friendship Building, No. 5 of Wenyi Road,  
Hangzhou

Tel: 0571-288653\*\*

Attorney: Zhang Tao (lawyer from Hangzhou Tianming Law Firm,

License number: \*\*\*\*\*)

Claimant, not convinced of the reason of her disemployment and not satisfied with the amount of financial damages, has dispute with Respondent, and thereby files the Application for Arbitration to this Commission. Upon acceptance of the Application, the Commission, in conformity with law, appointed a tribunal to hear the case in a public session, in which Claimant, Claimant's Attorney, Respondent and Respondent's Attorney were present. The hearing of the case has now been concluded.

Claimant claimed:

On May 16<sup>th</sup>, 2008, Claimant was employed by Respondent to do the packaging job at the workshop. During the probation period, Claimant was repeatedly sexually harassed by the workshop manager, John Hamilton, causing her severe psychological disturbance. After rejected by Claimant, Hamilton, by taking advantage of his authority on personnel administration, unreasonably fired Claimant out of revenge during the probation period. Claimant thereby lost the job opportunity and thus suffered serious mental distress. As a result, Claimant hereby prays arbitrators to enter an award against Respondent that all Claimant's relevant losses and damages be compensated by Respondent.

Respondent argued:

Respondent terminated the Employment Contract with Claimant on the following grounds:

1. Being repeatedly late for work and arbitrarily extending time for break without obtaining permission, Wang Ping materially breached Pinnacle's relevant rules and regulations and performed not dutifully at work.

2. Pinnacle had issued 3 pieces of Disciplinary Action (respectively dated June 2<sup>nd</sup>, 11<sup>th</sup> and 27<sup>th</sup> of 2008, see Exhibit 1, 2 and 3) to Wang Ping to remind her of her unqualified work performance.

Since the aforesaid acts of Wang Ping violated Pinnacle's disciplines and regulations, Pinnacle issued the Notice on Termination of the Employment Contract (see Exhibit 4) on July 7<sup>th</sup>, 2008 and officially terminated the Employment Contract with Wang Ping. In the LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS, Article 21 provides that "An Employer shall not terminate the labor contract during the probation period unless the employee falls into any of the circumstances stipulated in Article 39 and paragraphs (1) and (2) of Article 40 of this law. If an Employer terminates a labor contract during the probation period, it shall explain the reasons to the employee", and Article 39 "An Employer may terminate the labor

contract if the employee: (1) fails to meet the requirements for employment during the probation period; (2) materially breaches the Employer's rules and regulations;....."; furthermore, Article 27 of the REGULATION ON THE IMPLEMENTATION OF THE EMPLOYMENT CONTRACT LAW OF THE PEOPLE'S REPUBLIC OF CHINA provides that "During the probation period, where an employee's medical treatment period expires for an illness or a non-work-related injury, or where he is incompetent for his position, the employer may terminate the employment contract with him for the reason of failing to meet the employment conditions". In light of the above provisions, Pinnacle, with all justifications, might have immediately terminated the Employment Contract with Wang Ping. Instead, Pinnacle showed extreme forbearance in handling Wang Ping's case, informing her three days in advance, which is actually not its obligation.

Pursuant to the LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS, the Pinnacle Employee Handbook and the Employment Contract signed by both parties, Respondent made the decision to dismiss Claimant before the expiration of probation, o resulting from Claimant's unqualified work performance. On all accounts, Pinnacle's decision on this issue was lawful and appropriate with justifiable causes. Respondent hereby requests that the Arbitration Commission take into deliberation this statement of defense and dismiss

all of the Claimant's claims.

The investigation reveals that the facts are as follows:

On May 16<sup>th</sup>, 2008, Claimant entered Pinnacle and was arranged a position at the workshop to do the packaging job. The both parties signed a probation employment contract, in which they agreed on Claimant's monthly salary to be RMB 1,200 yuan. The Notice on Termination of the Employment Contract was made On June 30<sup>th</sup>, 2008, and served to Claimant on the same day, who was then fired.

The aforesaid facts are ascertained and proved by such evidence as Claimant's payroll slips, the Statement of Claimant Wang Ping, depositions of 4 witnesses (Feng Jing, Lin Long, Chen Peng and Ma Xiaoqiang), a copy of Pinnacle's rules and regulations, the Notice on Termination of the Employment Contract, three pieces of Disciplinary Action issued by Respondent to Claimant, and tribunal hearing transcript.

The Commission holds that during the period when Claimant was working with Respondent, Claimant had tried her best to adjust herself to her work position with Respondent, and basically she had obeyed Pinnacle's labor disciplines, rules and regulations, though she was occasionally late and extended the break time, which is not a circumstance of material breach of the employer's rules and regulations. Therefore, it is not appropriate for Respondent to terminate the

Employment Contract with Claimant for such a reason. Respondent's inappropriate act has caused Claimant some financial loss, which should be compensated by Respondent. Therefore, the Commission supports the Claimant's claim for compensation for the said loss.

While for the Claimant's claim for compensation for the mental loss caused by workshop manager John Hamilton's repeated sexual harassment, the Commission deems that it is not within the jurisdiction hereof and thus dismisses the said claim. Claimant may initiate legal proceedings with the court in respect of the claim.

Although the Commission has conducted conciliation, the two parties still fail to reach an agreed settlement due to the major dispute between them.

To sum up, up the deliberation of this Tribunal and in accordance with Article 2, Article 39, and Article 47 of the LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS, the award is entered into as follows:

1. Respondent pays Claimant as the damages the amount of RMB 600 yuan in lump sum within three days from the day of this award taking effect.

2. Other claims of Claimant are dismissed. The 300 yuan of arbitral costs are to be borne by Respondent.

If there is disagreement with this decision, legal proceedings may be initiated with the people's court within 15 days after receiving the Award and a duplicate of the bill of complaint should be sent to the Commission. If no legal proceedings have been initiated by the expiration of the time period, the Award shall take legal effect immediately thereon. Then, the both parties shall execute the Award. If one party refuses to execute the Award, the other party may apply to a people's court for compulsory enforcement.

Presiding Arbitrator: Li Wei

Arbitrators: Zhang Yi

Liu Rong

September 7th, 2008

Clerk: Wang Xin

## Guide for Major Applicable Laws

### A. the LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS

**Article 21** An Employer shall not terminate the labor contract during the probation period unless the employee falls into any of the circumstances stipulated in Article 39 and paragraphs (1) and (2) of Article 40 of this law. If an Employer terminates a labor contract during the probation period, it shall explain the reasons to the employee.

**Article 39** “An Employer may terminate the labor contract if the employee:

- (1) fails to meet the requirements for employment during the probation period;
- (2) materially breaches the Employer's rules and regulations;
- (3) causes substantial loss to the Employer due to his serious dereliction of duty or engagement in graft for personal gain;
- (4) establishes an employment relationship with another Employer simultaneously which materially affects the completion of his task with the original Employer, or he refuses to rectify the situation after being cautioned by the Employer;
- (5) causes the labor contract to be invalid due to any of the circumstances stipulated in paragraph (1) of the first paragraph of Article

26 of this Law; or

(6) is subject to criminal liability in accordance with the law.

**Article 40** An Employer may terminate the labor contract under any of the following circumstances by giving the employee 30 days' prior written notice or one month's wages in lieu of notice:

(1) where the employee is unable to resume his original work nor engage in other work arranged for him by the Employer after the expiration of the prescribed medical treatment period for an illness or non-work-related injury;

(2) where the employee is incompetent and remains incompetent after training or adjustment of his position; or

(3) a material change in the objective circumstances relied upon at the time of conclusion of the labor contract renders it impossible for the parties to perform and, after consultation, the Employer and the employee are unable to reach an agreement on amending the labor contract.

## B. the REGULATION ON THE IMPLEMENTATION OF THE EMPLOYMENT CONTRACT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

**Article 27** During the probation period, where an employee's medical treatment period expires for an illness or a non-work-related injury, or where he is incompetent for his position, the Employer may

terminate the employment contract with him for the reason of not failing to meet the employment conditions.

An Employer may terminate the employment contract with an employee on probation in accordance with the provision of paragraph (3) of Article 40 of the LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS on the termination of employment contract in the case of a material change in the objective circumstances and with that of Article 41 on the reduction of workforce.

**Article 30** In accordance with Article 40 of the LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS, an Employer may terminate the labor contract by giving the employee 30 days' prior written notice or one month's wages in lieu of notice. Where an Employer chooses the later, the amount of the payable one month's wages shall be consistent with that of the employee's wages of the previous month.

**Article 35** If an Employer revokes or terminates a labor contract in violation of the Law OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS, it shall pay the employee double the amount of damages provided for in Article 87 of the said Law.

Where an Employer has already paid the employee double the amount of damages provided for in Article 87 of the said Law, he shall not pay any more damages.

C. Though the Law of the Peoples Republic of China on the Protection of Women's Rights and Interests has special stipulations on "sexual harassment", those stipulations are too general to be well operational owing to the lack of detailed provisions.

D. The Measures of Sichuan Province for the Implementation of Law of the Peoples Republic of China on the Protection of Women's Rights and Interests provides that it is prohibited to commit sexual harassment against a woman with language, words, pictures, messages, body action or by any other means. And it specially provides that "the Employer shall take measures to stop sexual harassment in the workplace. If anyone violates the Measures to commit sexually harassment against a woman, where his act constitutes a violation of the public security administration, the victim may require the public security organ to impose administrative penalty on the violator, or may file a civil suit with the court according to law; where his act constitutes a crime, he shall be investigated into criminal responsibility. In the event that a sexual harassment occurring in the workplace has caused any harm to the victim's health, psychology and/or reputation, where the Employer has any fault therewith, it shall bear the corresponding civil liability for compensation.

Exhibit 1:

**Disciplinary Action**

Date: June 2<sup>nd</sup>, 2008

Employee: Wang Ping

Evaluation: Employee is working slowly and unable to meet quotas on the assembly line; Employee is leaving her work position for too long.

Foreman: Chen Peng

Manager: John Hamilton

Employee's Comments:

Signed by: Wang Ping

Exhibit 2:

**Disciplinary Action**

Date: June 11<sup>th</sup>, 2008

Employee: Wang Ping

Evaluation: Employee was late for 10 minutes; Employee was twice inappropriately dressed; Employee is working slowly.

Foreman: Chen Peng

Manager: John Hamilton

Employee's Comments:

Signed by: Wang Ping

Exhibit 3:

**Disciplinary Action**

Date: June 27<sup>th</sup>, 2008

Employee: Wang Ping

Evaluation: Employee was late for 20 minutes; Employee is a slow worker and unable to meet quotas on the assembly line; Employee is taking long breaks.

Foreman: Chen Peng

Manager: John Hamilton

Employee's Comments:

Signed by: Wang Ping

Exhibit 4:

**Notice on Termination of the Employment Contract**

Dear Wang Ping:

The Employment contract you signed with this Company on May 16<sup>th</sup>, 2008 stipulates that there shall be a 60-day probation. During the probation period, your poor work performance, such as low work efficiency and repeatedly being late, cannot satisfy this Company's requirement for employees. Therefore, the Company decides not to continue the execution of the Employment Contract with you and to terminate the labor relationship with as of the date.

In light of relevant provisions, the Company is to pay you 1,000 yuan, balance due from your wage, and 100 yuan as the severance pay, totaling RMB 1,100 yuan. Please complete related procedures and collect your wages and relevant pay before noon 12 o'clock on the day of June 30<sup>th</sup>.

Pinnacle Packaging Products, Inc. (Official Seal)

Signed by: JOHN HAMILTON

June 30<sup>th</sup>, 2008

## Employment Contract

(P)EC No. 17

Party A (Employer): Pinnacle Packaging Products, Inc. (Official Seal)

Domicile: 3<sup>rd</sup> floor of Friendship Building, No. 5 of Wenyi Road,

Hangzhou

Tel: 0571-288653\*\*

Legal representative: Bryan Allen

Party B: Wang Ping

Gender: female

Age: 22

Education Background: 4-year university graduate

Native place: Guangzhou

ID Number: 44068119770217361\*\*

Current address: Room 402, Unit 3, No.888 of Tianmushan Road,

Hangzhou

In accordance with the Labor Law of the People's Republic of China, the Law of the People's Republic of China on Employment Contracts, the Regulations of Hangzhou on Employment Contract and other laws, regulations and policies, Party A and Party B, through consultations on

the basis of equality and voluntariness, hereby enter into this Contract.

#### Article 1 Job Post and Job Duties

1.1 Party B shall hold a position with the purchasing department and shall complete his work according to the job duties defined by Party A.

1.2 Party B agrees that Party A may arrange Party B to do other job including practice on a switched post during the probation period if Party A's deems it necessary.

1.3 After Party B becomes a formal employee, Party A may switch Party B to a post that suits him/her better and correspondingly adjust his/her wages, if Party A finds Party B inadaptable to or incompetent for his/her job. If Party B is still incompetent for his/her new post, Party A is entitled to terminate the Contract.

#### Article 2 Term of Contract and Probation Period

2.1 The term of this Contract is from May 16<sup>th</sup>, 2008 to May 16<sup>th</sup>, 2010, during which, there shall be a probation period of 60 days.

2.2 Before the expiration of the probation period, Party A has the right to perform a performance review on Party B. If, upon review, Party is found failing to meet the employment conditions, materially violates the Employee Handbook, or constitutes other circumstances prescribed by law, Party A is entitled to terminate the Contract, or to switch Party B's

post and correspondingly adjust his/her wages.

2.3 Before the expiration of the probation period, Party A has the right to perform a performance review on Party B and to consult with Party B on the renewal of the Contract.

#### Article 3 4. Working Hours

Party A adheres to the standardized system of working hours: the normal working hours of Party B shall be not more than eight hours each day and forty hours per week. On each work day, Party B shall have 30-minute meal time and one 15-minute tea break in the morning and one in the afternoon respectively. The aforesaid meal time and break time are not included in the 40 working hours per week.

#### Article 4 Remuneration of Labour

The Party B's wages are RMB 1,200 yuan per month in the probation period. After the probation period when Party B is found to meet all employment conditions and becomes a formal employee, he/she shall be paid wages as listed in the following table:

Total amount of Party B's monthly	RMB [1500] yuan
pre-tax wages	
Base wages	RMB [1000] yuan

Living allowance	RMB [500] yuan
others	RMB [ ] yuan, to be defined

4.1 Party A shall pay the wages for the current month before 26<sup>th</sup> of each month.

4.2 Party B, after becoming a formal employee for one year, is entitled to a year-end bonus whose amount equals that of his/her two month's base wages, as specified in the Employee Handbook. After the first year of formal employment, the counting of the year-end bonus shall be closed on December 31<sup>st</sup> of each year.

4.3 Party A may pay Party B a certain amount of bonuses depending on the business operating status and Party B's work performance. The specific policy hereof shall be made by Party A.

#### 4.4 Calculation of Overtime Pay

4.4.1 In the event that Party A requires Party B to extend working hours, Party A shall pay Party B overtime pay (in the amount equaling Party B's hourly wages multiplying by the hours of overtime and by 150%);

4.4.2 In the event that Party A requires Party B to work on Party B's off day, Party A shall grant Party B compensatory leave or pay overtime pay (in the amount equaling Party B's hourly wages multiplying by the hours of overtime and by 200%);

4.4.3 In the event that Party B works on a bank holiday, Party A shall pay Party B overtime pay (in the amount equaling Party B's hourly wages multiplying by the hours of overtime and by 300%);

4.5 Party B's overtime work and pay shall be defined in accordance with the specific system of working hours applicable hereto as provided in Article 3 of the Contract. The specific calculation and terms of payment of the overtime pay shall be referred to the Employee Handbook.

#### Article 5 Labor Insurance and Welfare

5.1 Both Parties must participate in social insurance and pay social insurance premiums on a monthly basis in accordance with the law. The social insurance premiums payable by Party B shall be withheld by Party A from the wages hereof.

5.2 In the event of the termination of the Contract, the amount of financial compensation (or living subsidies) shall be determined in conformity with the state's related laws, regulations and policies and with the rules established by Party A according to law.

5.3 In the event Party B's sickness or injury, the period of medical treatment and other benefits hereof shall be determined by the state's related laws, rules, regulations and policies.

## Article 6 Vacation

6.1 In addition to all statutory holidays, Party B is also entitled to paid vacations including the paid annual vacation and the paid company vacation. The annual paid vacation shall be six days for Party B when he/she has accumulatively worked for 1 year; 10 days when he/she has accumulatively worked for 2 years, and 12 days when he/she has accumulatively worked for 3 to 20 years; and 15 days when he/she has accumulatively worked for 20 years or more.

6.2 The prescriptions on paid leave in the Employee Handbook apply to the definition and arrangement of the paid annual vacation and the paid company vacation.

6.3 Other vacations and leaves shall be enforced in accordance with the state's related laws, rules, regulations and policies, as specifically provided in the Employee Handbook.

## Article 7 Labor Discipline

7.1 Party B shall voluntarily comply with the state's laws and regulations, stick to social morality and professional ethics, and protect Party A's reputation and interests.

7.2 Within the term of the Contract, Party B shall comply with various Party A's rules and disciplines existing now or made and amended in the future, including the Employee Manual, the code of conducts, the

guide for operation procedures, and etc.

#### Article 8 Modification, Rescission, and Termination of the Contract

8.1 The Contract may be modified or rescinded in writing, on the basis of the consensus between the both parties or in accordance with the conditions provided by the Law of the People's Republic of China on Employment Contracts.

8.2 The both parties shall enter into the Agreement on the Employment Contract Modification in order to modify the Contract, provided that where Party B is incompetent for the job, Party A may make some adjustments to Party B's job arrangement without the need to enter into a written agreement with Party B.

8.3 If any article or articles of the Contract has been modified, the remainder thereof shall continue to be effective.

8.4 This Contract shall be terminated upon the occurrence of any of the circumstances of contract termination provided by the Law of the People's Republic of China on Employment Contracts.

8.5 Upon rescission or termination of the Contract, Party shall complete job handover procedures. The compensation shall be paid to Party B upon the completion of the job handover procedures, if there is any compensation payable to Party B.

## Article 9 Breach Liabilities

If any party breaches the Contract and causes financial loss to the other party, the faulty party shall be liable for compensation for the loss thereof.

## Article 10 Dispute Settlement

Where a dispute between the parties takes place during the performance of this Contract, the party concerned may apply to the District Labor Dispute Arbitration Commission. If one of the parties is not satisfied with the arbitration adjudication, the party may bring the case to a people's court.

## Article 11 Applicable Laws and Contract Performance

11.1 Laws of the People's Republic of China shall apply to the Contract.

11.2 For matters not covered by this Contract, related national, provincial and municipal provisions shall govern.

11.3 In the event that the provisions of this Contract contravene state's new laws, the state's new laws shall prevail.

11.4 Appendixes referred to in the Contract, including the Employee Manual, the code of conducts, and the guide for operation procedures, are inseparable part of the Contract and have the same legal effect with

the Contract. In case of any discrepancy between appendixes and the Contract, the Contract shall prevail.

11.5 The Contract shall take effect upon affixation thereto of the signatures and seals of the parties. The Contract is made in triplicate copies, all of which are of the same effect. Both parties shall respectively hold one copy thereof, and the rest shall be kept in personnel files.

Party A: Pinnacle Packaging Products, Inc. (Official Seal)

Party B: Wang Ping

Signature: John Hamilton

Signature: Wang Ping

Date: May 16<sup>th</sup>, 2008

Date: May 16<sup>th</sup>, 2008

## Exhibit 6

### **Statement of Claimant Wang Ping**

My name is Wang Ping and my date of birth is March 21<sup>st</sup>, 1986. I have a 4-year university undergraduate diploma. In May of 2008, through the introduction of my good friend, Li Manyu, I went to work with Pinnacle Packing Products, Inc. I filled out the application form and had an interview with the manager, John Hamilton, and then I successfully got the Employment Contract and officially started work on the day of May 16<sup>th</sup>.

According to the company's policy, all new employees have to work at a workshop on a probationary status for 60 days and will be arranged a new job post after the probation period. I was allocated to be a packaging worker at a workshop during my probation. And I was scheduled to work for 8 hours a day, 40 hours a week, with a half-hour lunch break and one 15-minute break in the morning and one in the afternoon respectively. My monthly salary was RMB 1,200 yuan during the probation period, and was supposed to be raised to 1,500 when I completed the probation period to become a permanent employee with the purchasing department, in addition to certain amount of annual bonus in the event of my good performance. I started to work on a packaging line since the probation began, and my immediate foreman was Chen Peng. I started work on

Monday, and the first week went without incident.

Because Friday was Chen Peng's birthday, some employees on our lines decided to take him out for drinks after work. We went to "Nine Thirty" bar, one kilometer from our company. Because Li Manyu and I had been taking bus together to work for the entire week, we went to the bar together, too. About 20 twenty employees showed up there, and we were all standing around because there were not enough seats for every one. Only until after 7 P.M. when Li Manyu and I pushed two tables together, we sat down. Hamilton arrived about one hour later, and I had not talked to him that evening. I was a little surprised when he sat down next to me. Of course, Chen Peng was still there, and he sat across the table from Hamilton.

We all talked for a while, and Hamilton bought a round of drinks for the table. I had four drinks. I felt a little headache because I was drinking on an empty stomach. The dress code of Pinnacle is casual, and I was wearing a T-shirt and a pair of jeans. When we all chatting, Li Manyu's boyfriend Mark came. Because there were not enough seats and I happened to sit next to Hamilton, we four all squeezed into the same couch. After a while, Hamilton suddenly put his hand on my knee. I did not know what to do, so I did not say anything. I tried to act like nothing was happening and continued our conversation. Apparently, Hamilton was encouraged because I had not done anything, so he moved his hand a

little further up my thigh. I moved closer to Li Manyu and turned my leg and his hand came off my leg.

When the whole bunch of us were about to leave, I found myself accidentally lag behind with Hamilton. When we two got out of the bar, other people had all left. And just at that time, Hamilton offered to give me a ride. I didn't want to, but because my headache got worse, I reluctantly accepted the ride from him. When we stopped in front of my apartment building, he started to tell me that I was doing a good job at work. He also said that I would get a raise when I completed my probationary period. He told me that Chen Peng made recommendations on who was promoted but that he had the final say. As he was talking to me, he put his hand on my knee again. I was concerned because we were alone and the street was not well lit. I did not pull away, but I told him that I had to leave. Hamilton then said that he would like to give me a goodbye kiss. I felt embarrassed, but I didn't say no because I thought it might be embarrassing to reject him because that was supposed to be an American etiquette to say goodbye. However, while I was turning my cheek to him, he suddenly kissed me on my lips. I was so surprised that I did not resist or try to push him away. I quickly got out of his car. When I got inside, I called Manyu to tell her what had happened and told her that I felt very uneasy and uncomfortable. She said perhaps Hamilton was coming on to me, and I told her I would never consider him as a choice

because he was old enough to be my father.

On May 26, 2008, I returned to work for the 8 A.M. shift. I saw Hamilton in his office talking to Chen Peng. Hamilton's office is near the employee entrance to the workshop. The front wall of his office is mostly glass. The lower three feet is made of concrete blocks, and everything else is windows.

As usual, Hamilton walked through the workshop several times during the shift. Sometimes he stopped and talked to a worker or Chen Peng, and other times he watched whether everything was going right at the workshop. Around 9:30 A.M., Hamilton walked up to me and asked whether I had a good weekend. He did not talk long, and neither one of us said anything about Friday evening.

I did not have any problems with Chen Peng during my first week on the job. On Monday, Chen Peng criticized me for not working fast enough and for spending too much time in the bathroom. Hamilton did not say anything to me about my job performance on Monday, and he only stopped to talk to me that one time in the morning. The criticism that started on Monday continued during the rest of the week. For the whole week, Chen Peng was watching me all the time and criticisms had never stopped. Manyu did not work on the same packaging line, but I complained to her about Chen Peng.

When I returned to work on Monday, June 2nd, 2008, Chen Peng was

waiting for me with a written reprimand. It stated that I spent too much time away from my work station and that I was not meeting the production quotas. He also told me that I had to meet with Hamilton before starting work. Chen Peng and I waited in Hamilton's office for him to arrive. When Hamilton came in, Chen Peng gave him a copy of the reprimand. Hamilton read the write-up and reminded me that I was on probation. He also said that any additional write-ups would affect his decision on whether I would become a full time employee. Chen Peng and I started to leave the office when Hamilton told me that I had to sign the reprimand. I signed it and gave it back to him. Before I could leave the office, Hamilton told me that I was much prettier when I smiled. I was in a low mood because of the criticism on my work performance, and I told him that I did like smiling, and he said that I should not worry about my job. As I turned to leave, Hamilton asked me whether I would join him for a few drinks after work to relax. I refused him. I went directly to my position, and I could tell Chen Peng was irritated by the delay in Hamilton's office. I worked as hard as I could, especially when Chen Peng was around.

Hamilton made his usual rounds on that day. The first few times, he totally ignored me. I was convinced that he was mad at me for being refused by, which made me somewhat uneasy because I didn't want to lose a chance for a stable job for such a reason. Therefore, I decided to

find an opportunity to say hello to him so as to ease the tension between us. In the afternoon after work when I passed by his office, I said goodbye to him. And he came up to say something polite, and then he gave me a note and asked me read it after I got home. Later I read the note, which said: "I like you very much and sincerely wish to see you succeed." I also had Manyu read the note, and she said that Hamilton was coming on to me.

In the following days, I tried my best to perform well at work. However, unexpectedly, Chen Peng began to criticize my dress since he could find any other fault with me. The company has no specific dress requirements for the employees working at the workshop. It is very hot in Hangzhou in May and June, and the workshop is not air conditioned. Nearly all of the employees started wearing T-shirts. I did not think my T-shirts were too tight or suggestive. On June 4<sup>th</sup>, Chen Peng started complaining about my outfit. It was very hot that day, and I rolled up the sleeves on my T-shirt and tied a knot in it just above my belly button. When he said it was inappropriate, I immediately rolled down my sleeves and untied the knot. Ma Xiaoqiang was working next to me, and he told Chen Peng that he was not offended by the T-shirt. Chen Peng made some comment that I was at work and not at the beach.

Hamilton had walked past me about 15 minutes before Chen Peng, and he did not say anything about my attire. In fact, he smiled at me as he

walked by. A few days later in order not to be complained by Chen Peng's any more, I wore a loose fitting T-shirt to work. On the front, it said "If you can read this, you're staring." When Ma Xiaoqiang saw it, he made some comment about being a slow reader. Lin Long was working nearby. When she heard his comment, she told Ma Xiaoqiang that his illiteracy finally was paying off. I laughed at her joke, but I did not say anything to either of them.

Later in the morning, Hamilton walked through the workshop. He looked at my T-shirt and made a comment. Ma Xiaoqiang made some comment about Hamilton having poor eyesight and needing a closer look. Hamilton laughed at the joke. I laughed at their jokes but did not make any other comment. A short time later Chen Peng arrived and the trouble started. He told me that the T-shirt was inappropriate and that I had to turn it inside out. Ma Xiaoqiang suggested that I make the change right there, but Chen Peng told me to reverse the T-shirt on my next break.

My fourth week on the job started uneventfully. I thought that my performance was improving, and Chen Peng was not spending as much time in my area. However, on June 11, 2008, Chen Peng was waiting for me when I came to work. I had over slept that morning, and Manyu couldn't reach me because I had switched off my cell phone. I did not get to the workshop until 8:10 A.M. That was the first time I had been late since I started at Pinnacle. Chen Peng told me he was writing me up for

being late and my general conduct. The written reprimand mentioned that I was late, that I dressed inappropriately, and that I was a slow worker.

Chen Peng gave Hamilton a copy of the write-up. Hamilton told me to stop in his office on my next break when he was making his morning rounds. I went to his office just before my lunch break. Hamilton had a copy of the reprimand on his desk and started reading it. He asked me what I had to say, and I told him that I had overslept that morning.

Hamilton asked me why my boyfriend had not awakened me. I told him that I did not have a boyfriend and that I was sleeping alone. He again reminded me that I was on probation. I didn't say anything, bending my head all the time. He patted me on the shoulder and told me and that I would not be hired as a permanent employee if I continued to have problems. The he asked me to sign the write-up. During the entire period, his hand was never off me, instead, was moved from my shoulder to my waist, pressing closer to my body. I was extremely uncomfortable, but I dare not say anything about it, thinking that the two-month probation was coming to an end soon. He passed me a pen and whispered very close in my ear, telling me to sign. I felt awfully embarrassed by his posture and thus signed the write-up right away. When I turned to escape, Hamilton was standing between me and the door, asking whether I had any beautiful photos of myself and saying that he wanted some. He commented that since I did not have a boyfriend he would like to take me

out to dance at Radisson that weekend. He said he was a good dancer and he especially wished to dance with me. I said I was engaged on that weekend and hurried out his office. I was worried for the entire afternoon, thinking of the lunch break incident. I gave a thought to reporting to Feng Jing of the Human Resources Department, but gave it up because I was afraid it was no use doing so because after all Hamilton was the one who made the final decision on my job. On his afternoon rounds when he walked past me, Hamilton told me on the quiet to go to his office after work. I went there after work, but I asked Manyu to wait me at the door and made a call to my cell phone if I had stayed inside for over 5 minutes. After I got into the office, Hamilton was smiling at me all the time and commented that I could have performed better because I was a smart girl; but I said nothing. Then he took out a gift box from a drawer, pushed it to me, took my hand and told me that it was for me. I told him I wouldn't accept it. He said he insisted and told me not to make him unhappy. During the time, he had been holding my hand and would let go of it. I hoped to leave soon, so I took the box, said "thanks", and then got out at once. On the way home, Manyu asked me to open the box. After I opened the box, I saw black lady's underwear inside. Manyu cried at the sight of it and said that it was too much and that Hamilton must be coming on to me. I told her that I was very annoyed because I didn't like him at all, but the whole thing seemed out of my control. From that evening on, I began

to have problem with my sleep, thinking what I should do all the night.

That Saturday afternoon, I was leaving my apartment to meet some friends and to go shopping. As I was about to get out of the door to my unit, I saw Hamilton driving past the neighborhood passage. I waited a minute to make sure he was gone and walked out. As I was about to walk out of the main entrance to my residential quarter, I saw Hamilton again coming from the other direction. In order to avoid him, I quickly ran into a small store nearby, pretending to buy something; but I didn't see Hamilton put his head out.

When I returned to work on Monday, June 16, 2008, Hamilton was walking out of his office. He stopped and said hello and asked whether I had enjoyed the weekend. I told him that I had had a good weekend and asked him what he had done that weekend. He said with a smile that he was lonely and waiting for my call but I didn't call. I said nothing. Neither one of us commented on him driving past my apartment on Saturday afternoon.

Monday was another hot day. Nothing special happened that morning. After I completed my lunch break, I threw some cold water on my face and neck to cool down. My T-shirt was a little wet when I returned to my work station. Ma Xiaoqiang made a comment to me about joining a wet T-shirt contest, and I asked him whether he thought that I would win. Lin Long heard his comment and told Ma Xiaoqiang that she was going to

hose him down with cold water. Ma Xiaoqiang made some comment about holding the hose and judging a wet T-shirt contest between Lin Long and me. After the brief bantering, all three of us returned to work.

As luck would have it, Chen Peng walked past and saw my T-shirt. He again commented that my appearance was inappropriate. Ma Xiaoqiang made some comment to Chen Peng about a company wet T-shirt contest that afternoon. Chen Peng just looked at Ma Xiaoqiang and told him not to encourage me.

On Wednesday, June 18, Manyu dropped something on her foot and had to leave the workshop to have her foot X-rayed. On my afternoon break, I called a male friend of mine, Zhang Wei, and asked him to pick me up after work. I left the workshop shortly after 4:30 P.M. and walked to the main gate to wait for him. Around 5 P.M., Hamilton drove up to the main gate and asked me whether I needed a ride. I told him that I was waiting for a friend and did not need a ride. Hamilton asked me whether the friend was male or female, and I told him the friend was someone I worked with at my last job. I did not tell him my friend was a man because I did not think that it was any of his business. Hamilton did not repeat the question, but he continued to make small talk. I got the impression that he was waiting to see who came. A few minutes later, Zhang Wei came, and I said goodbye to Hamilton right away.

On Thursday morning, I went to work by bus alone because Manyu

still had to see a doctor. Hamilton was standing near the entrance to the workshop when I got there. He asked me to step into his office and told me that Chen Peng had complained about the wet T-shirt incident. Hamilton said that Chen Peng did not have much of a sense of humor at work but that he was a good guy when you got to know him. Hamilton then added that I would find that he also was a great guy if I took the time to get to know him. When I asked Hamilton whether I could go to my work station, he asked me where I had gone after work. I told him that Zhang Wei was only a friend and that he would send me home. Hamilton commented that if I had let him drive me home, besides treating me to dinner he would give me a gift more interesting than the one he gave me last time. I flushed at the thought of the last gift. He said he liked watching my bashful face, very pretty. I didn't say anything. Smiling an embarrassing smile, I went back to my work station. Because of that delay in Hamilton's office, I got to my station around 8:15 A.M. and Chen Peng was waiting for me. Before he could say anything to me I told him that I had been talking to Hamilton. Chen Peng made some comment about me not thinking myself young so as to curry favor with the boss and then he walked away. I was offended because Hamilton kept coming on to me and I had not encouraged him.

On Monday, June 23, 2008, Hamilton again stopped me as I entered the workshop. He asked me whether I had a good weekend, and I said yes.

He then asked me whether I had seen Zhang Wei, and I told him again that we were only friends and not dating. Hamilton also asked me whether I had spent my entire paycheck at the mall. This comment freaked me out and I wondered how he knew that I had been shopping. I did not say anything to Hamilton about the comment, but I was concerned that he may have been stalking me. Chen Peng came up to me as soon as I got to my work station. He told me that he knew that I was not late because he saw me flirting with Hamilton. I told him that I was not flirting with Hamilton and that Hamilton had stopped me on my way into the workshop. Chen Peng told me that if I had done a better job, I would not have to flirt with Hamilton. I was very angry but I didn't have a fit. I became more and more nervous and much quieter than before. Sometimes when a work fellow walked past me, I would think it was Hamilton passing by. And later Manyu also commented about me seeming to become sort of jumpy.

On Tuesday, Hamilton stopped me as I was leaving work. He asked me to step into his office, and I did. Hamilton told me that his birthday was Saturday and asked me whether I wanted to go out and celebrate with him. I told him that I did not think it was a good idea for me to date the boss and declined his invitation. Hamilton was standing between me and the door, and I felt uncomfortable. I told him that I had to leave and walked past him.

On Friday, the bus I took conked out halfway to work. When I arrived at work around 8:20, Chen Peng was waiting for me. I explained to him about the bus problem, but he still told me that he was going to give me another written reprimand. Hamilton walked through the workshop several times on Friday and never looked at me. I felt like I was in trouble because Chen Peng was going to give me another write-up and Hamilton was ignoring me. In order to do something to amend my worse situation, as I left work on Friday, I stopped in Hamilton's office. I wished him a happy birthday and said that I hoped he had a nice weekend. He asked me whether I had changed my mind about dinner on Saturday, and I told him that I had not. Because of the long-drawn intension, I frequently suffered from insomnia and nervousness, always afraid that something might happen. Days ago, I had a meeting with several university classmates now working in Hangzhou, at which they mention that Xiao Xia, a girl in the same class with me at university, attempted suicide but failed, and that it was that she had developed depression. I knew her job-hunting was not smooth and she broke with her boyfriend with whom she had many years' relationship. I was concerned that I might have depression, too, so I went to see a doctor at the First Hospital of Zhejiang Province. The doctor told me that I had light depression and asked me to relieve some weight on my mind, to adjust my mood and to have more rest. And then he suggested me to have a 3-day leave for rest. I was determined to bring

the sick-leave certificate to the company to ask for sick leave on Monday.

On Monday, June 30, 2008, I went to work with Manyu for the first time since her injury. I asked her to leave early because I did not want to be late. When I walked into the workshop at 7:50 A.M., I did not see Chen Peng or Hamilton. Lin Long arrived a few minutes later and told me that she saw Chen Peng and Hamilton at the employees' entrance to the workshop. She said that they were not really talking to each other, and it appeared as though they were looking for someone. I knew that that was not a good sign. Ma Xiaoqiang came to the work area about ten minutes later. He commented on being a few minutes late and having to walk past Hamilton and Chen Peng. He said he just smiled and kept walking as fast as he could.

When Chen Peng came to me around 8:15 A.M., I was working. I continued to work and tried to ignore him, but he came up to me with another write-up in his hand. The first thing he said to me was "How did you sneak in?" I told him that I had punched in before 8 A.M. and that he could check my time card if he did not believe me. I took out the sick-leave certificate and gave it to Chen Peng. He had a look at it and threw it aside and told me that he just had "another present" for me that could render me a good rest. He then handed me the reprimand. It stated I had been late for work on Friday and included the same complaints of being a slow worker and taking longer breaks than I was allowed. Chen

Peng told me that Hamilton wanted to see me immediately.

I went to Hamilton's office, and he was waiting for me with a copy of the write-up. He told me that Chen Peng had been complaining about me from the start and that he had tried to convince Chen Peng to give me time to adjust to the new job. Hamilton came near to me and told me that apparently not only I was incompetent but also I was not smart enough, so I could work here any more. He said that I should punch out and turn in my ID badge. He handed me a document, the Notice on Termination of the Employment Contract. I was upset because I was doing my best, and I asked Hamilton to give me another chance. I told him that I had come in early because I was late on Friday and had not wanted to be late again. Hamilton told me that I was not entitled to any more chances because he had given me too many chances. He told me that he was disappointed with me because it was I who hadn't known how to grasp chances. He said that his mind was made up. I was too angry to care anything else. I scolded Hamilton in a loud voice that I was being fired because I would not go out with him. He just said that I had missed out on another opportunity. Hamilton then called security, and I was escorted out of the plant.

When I was hired at Pinnacle Packaging Products, I received a copy of the Employee Handbook. I am aware that the Handbook prohibits harassment and provides for reporting any incidents to the Human

Resources Department. The administrative offices are in another building next to the workshop, and I went to the Human Resources Department to complete the paperwork when I was hired. I never filed a complaint with Human Resources about Hamilton either before or after I was fired. On more than one occasion, I saw Feng Jing, the Human Resources director, walking through the workshop. I never made any complaint to her about Hamilton.

Wang Ping

August 1<sup>st</sup>, 2008

Exhibit 7:

### **Statement of John Hamilton**

My name is John Hamilton, and my date of birth is June 26, 1952. In February 2008, my wife Nancy and I separated. A few weeks later, Nancy filed for divorce and got a restraining order against me. Shortly after we separated, I was at our house, and Nancy and I had an argument. Both of us were yelling, and I got mad and knocked over a lamp. I never hit Nancy or threw anything at her, but her lawyer asked the judge for a restraining order. I realized that we would not reconcile, so I did not contest the restraining order. I never violated that order. Our divorce became final August 19, 2008.

I have worked for Pinnacle Packaging Products since September 1985. In January 1993, I became the foreman for two packaging lines. Chen Peng worked for me and became foreman when I was promoted to workshop manager in October 1996.

Li Manyu works on one of the packaging lines supervised by Chen Peng. When an opening on the line occurred in April 2008, Li Manyu mentioned that she had a friend, Wang Ping, who was looking for a job. Li Manyu is a good worker, so I was willing to accept her recommendation. I told Li Manyu to have her friend fill out an employment application from the Human Resources Department.

Wang Ping came in for a job interview in May 2008, and I offered her a job. I granted her the approval to start work on May 16, 2008. I sent her to the Human Resources Department to see Feng Jing and complete the paperwork.

All new employees are hired for a sixty-day probationary period. After the sixty days, they become permanent employees and receive health insurance and other benefits. I explained this to Wang Ping, and it also is covered in the Employee Handbook that each new employee receives.

I walk through the workshop several times a day to see how things are going. I know all of the employees by name, and I greet them or talk to them briefly, especially if they are on a break. When I was walking through the workshop after I had offered Wang Ping the job, I stopped to talk to Li Manyu. I told Li Manyu that I had hired Wang Ping and thanked her for recommending her. I know that Li Manyu has said that I made a comment about hiring all of her good looking friends. I may have made a joke like that, but I do not remember what was said.

Wang Ping worked under the supervision of Chen Peng. Wang Ping and Li Manyu did not work on the same line, and you cannot see what is going on at the other line from your work station. Some of the employees talk on breaks even though they work on different lines.

Chen Peng is responsible for supervising the lines and dealing with

any problems that might come up. If a problem is serious enough, the employee will receive a written reprimand. I will review the write-up with the employee. Most of the time Chen Peng or the supervisor who handed out the reprimand will attend the meeting. The employee is required to sign the write-up and can take down comments on it if there is a dispute about what occurred.

I have the final say on who is hired or fired in the workshop.

Although I do watch what is happening in the workshop, normally I rely on the recommendation of my foremen when I make the final decision.

I do not remember anything out of the ordinary during Wang Ping's first week on the job. I saw her working several times, and she seemed to be learning the job. During the first week, a new employee is assigned to someone for training, so Wang Ping had someone helping her do the work. I did notice that Wang Ping had problems lifting some of the heavier packages.

Occasionally, Wang Ping and I would exchange greetings. During the first week, I only talked to her two or three times to ask her how things were going. Wang Ping never had any complaints about the work or about Chen Peng.

On May 23, 2008, some employees decided to stop for drinks after work to celebrate Chen Peng's birthday. They told me to go to "Nine Thirty" bar, and I said that I would meet them when I finished a few

things in the workshop. I left work about one hour after everyone else.

When I got to “Nine Thirty”, some of the employees already had left. Li Manyu and some other people were pushing tables together so everyone could sit down. I sat down across the table from Chen Peng. When I sat down, I noticed that Wang Ping was sitting on my right and was sitting next to her. A young man came later and sat on the other side of Li Manyu, and Wang Ping said that he was Li Manyu’s boyfriend.

Li Manyu was spending a lot of time talking to her boyfriend, so Wang Ping talked to Chen Peng and me quite a bit. I do not know how many drinks Wang Ping had before I got there, but I did buy one round for the table. Wang Ping was very friendly, and I did not see anything to suggest that she and Chen Peng were having any problems at work.

Wang Ping was sitting close to me at the table and frequently rubbed or bumped against me. After about one hour, I put my hand on her knee. Wang Ping did not say anything or pull away, so I left it there for a minute or two. Wang Ping was wearing jeans just like everyone else at work.

I could tell that Wang Ping was having a good time and was not planning on leaving soon. When the whole bunch of us was leaving the bar, she lagged behind with me. I do not know whether she was on purpose to spend time alone with me, but when I offered to give Wang Ping a ride home, she accepted my offer without any hesitation.

Wang Ping lives in an apartment building in the Liushuiyuan residential quarter, and it took me just a few minutes to drive there. I stopped in front of her apartment building, and we talked for a few more minutes. I do not remember what we were talking about, but she seemed very relaxed and not in a hurry to get out of the car. I bent over and kissed her. Wang Ping did not pull away or resist. She even said good night before she got out of the car.

After Wang Ping left, I realized that kissing her was not a good idea because I was her boss and there was a significant age difference between us. I was not going to say anything about it to Wang Ping on Monday and see how she reacted.

I saw Wang Ping on May 26, 2008 when I was walking through the workshop. We exchanged greetings, and neither one of us said anything about what happened Friday evening. I did not tell Chen Peng or anyone else about the incident.

Some time that week, Chen Peng told me that he was not satisfied with Wang Ping's performance. He said that she was a slow worker and did not return to the line promptly when her break was over. I told Chen Peng to let me know if the problems continued.

When I walked through the workshop that week, I made an effort to watch Wang Ping and see whether her performance was improving.

Wang Ping was very friendly, and I frequently saw her talking to other

workers, especially when she was walking to or from a break. She still had problems lifting heavy objects. I hoped that she could get stronger and made more progress with her job.

On Thursday, Chen Peng told me that he was going to issue Wang Ping a written reprimand if her work did not improve on Friday. I told him that it was his decision to make and that I would talk to him and Wang Ping Monday morning if he gave her a write-up. Before Chen Peng left Friday evening, he told me he was going to give Wang Ping a write-up when she came to work on Monday.

Wang Ping and Chen Peng were in my office when I got to work Monday morning. Chen Peng gave me a copy of the write-up, and I read it quickly. I reminded Wang Ping that she was on probation and that she might not become a full time employee if she got any more reprimands.

An employee is required to sign any reprimand before it is sent to the Human Resources Department. Chen Peng left, and Wang Ping stayed to sign it. I could see that Wang Ping was upset. I did not want her to lose her enthusiasm for work, after all, she was too young and new for the job, so I offered her some encouragement. I told her the job would get easier as she gained more experience. In order to make her relax and not to keep a straight face, I told her that she should smile because she looked even prettier when she was smiling. Apparently, she had not recover from her depression, and answered that she did not like smiling.

I know that Wang Ping has said that I asked her out for a drink before she left the office. I did not ask her out because we had just discussed her performance and asking her out would not have been appropriate. Wang Ping left my office immediately after I told her to smile. She greeted me at the workshop later that day, and we had a brief talk. She still seemed to attach much importance to my opinions. But of course, she was still upset. I did not wish to see her totally deny herself only because of a copy of written reprimand. Being senior to her in age and rank, I wish to give the new employee the best help and the biggest encouragement to see her improve with her work. Therefore I wrote a note and gave it to her after work, which said: ““I like you very much and sincerely wish to see you succeed.”

Wang Ping was involved in another incident with Chen Peng a few days later. It was hot in the workshop, and Wang Ping had rolled up the sleeves on her T-shirt and had tied a knot in the end of the shirt. I saw Wang Ping but did not say anything to her about her attire. I later learned that Chen Peng had told her to untie her T-shirt when he walked past a few minutes later.

The following week Wang Ping had another run-in with Chen Peng about her attire. She was wearing a T-shirt that said “If you can read this, you’re staring.” I saw the T-shirt and said I would try to read the fine print. Ma Xiaoqiang was nearby and heard my comment and said

something about stepping closer because I had poor eyesight. Wang Ping laughed at the jokes and obviously enjoyed the attention. I was not around when Chen Peng came, but the next time I saw Wang Ping she was wearing the T-shirt inside out.

I did not notice anything unusual about Wang Ping's performance as I walked through the workshop. She frequently greeted me or stopped working for a short time to ask me a question. I knew that Wang Ping would not be one of our best workers, but she appeared to be making some progress.

Wang Ping came to work late on June 11, 2008, and Chen Peng gave her another write-up. The reprimand also mentioned her general performance and her clothing incidents. I told Wang Ping to come to my office on her next break, and she stopped in just before lunch. Wang Ping told me that she had overslept, and I made a comment about her boyfriend waking her up. I intended it as a joke, but I could tell that she was not in a joking mood, so I dropped the boyfriend subject.

I admonished Wang Ping to work harder and reminded her that she would not be hired as a permanent employee if her performance did not improve. I placed the write-up on my desk for Wang Ping to sign and left the office for lunch.

My desk is against the wall, and I had to walk behind Wang Ping to leave my office. I never touched her as I walked past her and did not ask

her out for dinner. Later that afternoon, Wang Ping smiled at me and said “hello” as I walked through the workshop. She definitely did not act like she was upset with me. She was not as depressed as last time she received the written reprimand, but I still could tell that she was a bit upset and nervous. I thought she might need my encouragement, so I asked her to come to my office after work, where I had a talk with her, mainly to encourage her to gain more confidence.

Wang Ping’s apartment building is on Tianmushan Road, which is heavily traveled. I have driven past that apartment building many times both before and after I found out Wang Ping lived there. I am aware that Wang Ping claims that she saw me drive past her building and return from the opposite direction a short time later. She may have seen me drive past, but I was not stalking her and did not drive back and forth in front of her apartment.

I am aware that Chen Peng was upset with Wang Ping about the wet T-shirt incident. I did not walk through the workshop at that time, so I did not see anything. I understand that Wang Ping encouraged some comments from some of the male workers when they saw her.

On June 18, 2008, Li Manyu dropped something on her foot and had to leave the plant for X-rays. Wang Ping and Li Manyu went to work together, and I saw Wang Ping standing at the main gate when I was leaving work that evening. I asked Wang Ping if she needed a ride, and

she told me that a friend was coming to pick her up. I waited a few minutes to make sure that Wang Ping had a ride home. We talked as we waited, and then a guy drove up. I asked Wang Ping if he was her boyfriend, and she said it was just someone she had worked with.

I saw Wang Ping when she was coming into work the next day. Chen Peng had complained to me about the wet T-shirt incident, so I mentioned it to Wang Ping as she walked into the workshop. I asked her if she needed a ride home that evening, and she said that she could go home by bus. I told Wang Ping that she should let me know if she needed a ride while Li Manyu was off work. I did not really ask her out to dinner, but I made a comment about buying her a McDonald's Happy Meal on the way home. Wang Ping thanked me and went to her work station. I never asked her any questions about what she and her friend had done the previous evening. I saw Wang Ping in the workshop several times that day, and she smiled and greeted me each time. She did not seem to be offended by my offer to give her a ride home.

It was not unusual for me to talk to Wang Ping either in the workshop or the break room. I do not remember the specifics of any conversation we may have had on June 23, 2008. I am sure that I asked her whether she had a good weekend. I did not ask her about whether she had dated anyone that weekend. Because the previous Friday was payday, I remember asking her if she had spent her paycheck shopping. I have no

idea whether she had gone shopping, but I assumed that she had and made the joke.

Nothing eventful occurred between Wang Ping and me the rest of the week. Either Thursday or Friday I was talking to Wang Ping as she was leaving the break room. She asked me whether I had any plans for the weekend, and I told her my birthday was on Sunday. I also told Wang Ping some friends were taking me out to dinner on Saturday. I never asked Wang Ping to join us. As Wang Ping left work on Friday, she stopped in my office and wished me a happy birthday. I thanked her and told her to have a nice weekend.

After Wang Ping left the workshop, Chen Peng stopped in my office and told me that Wang Ping was late for work again that morning. He also said that Wang Ping was not improving and that he thought she should be fired. We discussed her work record, and I told Chen Peng that I would fire Wang Ping when she came to work on Monday. Chen Peng prepared the write-up and said he would give it to Wang Ping on Monday.

On Monday June 30, 2008, Wang Ping came into my office after her shift had started. I told her that things were not working out and that Chen Peng was constantly complaining about her job performance. I told Wang Ping that she was fired and called security to escort her from the building.

For the first time, Wang Ping said that she was being fired because

she would not go out with me. I told her she knew that was not true and that she had received several warnings. I told her that Li Manyu had gotten her the job and that she had not taken advantage of the opportunity. I believed that why she thought that way was because she was just fired and was very upset. When she cooled down, she would be fine.

Wang Ping is the only probationary employee who was not given the full sixty-day probationary period. Chen Peng told me that Wang Ping was not improving, and we did not believe anything would change in the remaining few weeks.

John Hamilton

August 7<sup>th</sup>, 2008

Exhibit 8:

### **Deposition of Li Manyu**

My name is Li Manyu, and I have been employed by Pinnacle Packaging Products since June 2004. I work on one of the packaging lines supervised by Chen Peng. John Hamilton is the workshop manager, and Chen Peng reports directly to him.

Chen Peng supervises the packaging lines that are adjacent to each other. If I am at my work station, I cannot see what is happening on the other line.

In April 2008, when I heard that there was an opening on the other packaging line, I thought of Wang Ping. Wang Ping and I have been friends since high school, and I knew that she was looking for a new job. I talked to Hamilton about Wang Ping, and he told me to bring a job application for Wang Ping to fill out and to bring it back to him. A few days later, Wang Ping had a job interview with Hamilton. The front of Hamilton's office is mostly windows, and I could see Wang Ping and Hamilton talking. A short time later, I saw Hamilton showing Wang Ping around the workshop.

I was returning from my lunch break when Hamilton came up to me and told me that he had hired Wang Ping. I thanked him for hiring her, and he said that I should tell all my other good looking friends to apply

for a job.

Wang Ping started working on May 16, 2008, and we went to work together by bus. Wang Ping did not have any problems the first week, but she did say that it was hard work.

At the end of the week, we decided to go to “Nine Thirty” bar to celebrate Chen Peng’s birthday. I went to “Nine Thirty” bar along with Wang Ping and called my boyfriend and told him to meet us there after work. The bar was crowded, and we all were standing around having a drink or two. Some of the people started to leave, and so we got a few tables to push together so we could sit down. Hamilton was not there at first, and after I sat down I saw him for the first time. Hamilton sat next to Wang Ping, and Chen Peng was sitting across from Hamilton. My boyfriend had arrived, and he sat on one side of me. Thus the four of us sat on the same couch, which was much crowded and all of us squeezed in a bit.

After we got seated, Hamilton bought a round of drinks for everyone. I spent most of my time talking to my boyfriend and the people across from us. Occasionally, I said something to Wang Ping, but she spent most of her time talking to Hamilton and Chen Peng. We may have been seated about an hour when Wang Ping moved closer to me. At first I did not think anything of it, but a short time later she moved closer again. I felt something was not right and gave her an inquiry eye. She implicitly said

she needed more room and glanced at Hamilton. I could see that he was getting close to Wang Ping so I moved over to give her more room.

Later, the whole bunch of us left the bar together, and I was with my boyfriend. About thirty minutes later, Wang Ping called me on my cell phone and told me about Hamilton kissing her good night, and she said she didn't know what to do. I told her that Hamilton was probably coming on to her and said that he was not the worst guy she had kissed, and she commented that he was the oldest, old enough to her father. Our conversation was short, but I did not feel that Wang Ping was upset.

I did not see Wang Ping until I were on the bus to work on Monday. I told Wang Ping that she would be hired for sure if she started dating Hamilton. Wang Ping told me that she had no intention of going out with Hamilton and that they both had been drinking when they kissed. She did not seem upset about the incident, but I could tell that she did not want to be teased about it.

Wang Ping and I saw Hamilton in his office with Chen Peng when we walked into the workshop. Wang Ping went directly to her work station, and I went to mine. I cannot see the other line from where I work so I do not know what happened that day. Wang Ping did not say anything about either Hamilton or Chen Peng on our way home that evening.

Hamilton generally walks through the workshop several times a day. Because Chen Peng is responsible for the two packaging lines, he cannot

watch us all the time. I have seen him in Hamilton's office many times, and he makes calls to other parts of the plant to check on production and shipping.

We are entitled to two fifteen-minute breaks during the day and a thirty-minute lunch break. We cannot take the breaks at the same time because we have to keep the line moving. We do not have to punch a time clock when we take a break. Sometimes I would see Wang Ping when I had a break. I know Wang Ping did not always get back to her work station on time. A few times she would stay with me if I went into the break room when she already was there. I also saw Wang Ping talking to other workers at times as she was returning to her job. Everyone took a few extra minutes some days, and Wang Ping was no different than anyone else.

I was not aware that Wang Ping was having any problems with Chen Peng until later in the week. Wang Ping complained that Chen Peng was watching her all the time and criticizing her work. I had not had any problems with Chen Peng, and I encouraged Wang Ping to hang in there and do her best.

If someone gets a written reprimand, he has to meet with Hamilton and Chen Peng. The employee has to sign the reprimand, and there is a place for the employee to write in any comments. I believe the reprimand then is put in the employee's file. The following Monday (June 2), I

heard through the gossip mill that Wang Ping had received a write-up and was seen in Hamilton's office. After work, Wang Ping told me that she had received the reprimand and had met with Chen Peng and Hamilton. After Chen Peng left, Wang Ping said that Hamilton asked her out and reminded her that he had the final decision on her future with the company but that she refused him. Besides, Wang Ping showed me a note, which she said was quietly handed by Hamilton after work. The note said: "I like you very much and sincerely wish to see you succeed." At that time I teased her and said: "The manager seems to be serious about you. He is coming on to you. You'd better think over it."

One day Wang Ping was wearing a T-shirt that said "If you can read this, you're staring." I told her that the shirt would get her some attention, and she laughed. I was not aware that Chen Peng had complained about the rolled up T-shirt. If I had heard about that, I might have said something to Wang Ping about her latest T-shirt. When Wang Ping met me after work, the T-shirt was inside out. Wang Ping told me that Chen Peng had made her reverse the shirt on one of her breaks.

On June 11, 2008, Wang Ping called me as I was getting ready to leave my apartment. She told me that she had overslept and that she would go to work alone. I do not know what time she got to work, but later I saw Wang Ping, and she told me that she had received another reprimand from Chen Peng. Wang Ping also complained about her

meeting with Hamilton. Apparently, Hamilton had made some comment about sleeping with her boyfriend and brushed against her when she was leaning over the desk to sign the write-up. Wang Ping also said that Hamilton even asked Wang Ping for her photos and he had again asked her out to dance at Radisson but that she would not go out with him even if it meant losing her job.

When we started to leave after work, Wang Ping told me that Hamilton asked her to see him in the office. She was a little concerned and asked me to wait at the door. She told me to call her on her cell phone if she had stayed inside for over 5 minutes. I could see through the window that Hamilton passed one thing to Wang Ping, holding her hand all the time. On the way home, Wang Ping told me that Hamilton gave her a gift and she accepted it in order to leave soon. I asked her to open the box. It was black lady's underwear. I thought that was too much and teased Wang Ping, saying that Hamilton must have been attracted to her and were making his moves. Yet Wang Ping didn't seem to take it easy. She said she didn't like Hamilton and all his moves only made her feel annoyed and terrified. She was afraid that she was unable to take this thing under control. And she appeared worried for the whole evening.

On June 18, 2008, I dropped a box on my foot and had to leave the plant to have it X-rayed. Before I left, I told Wang Ping that she would have to take the bus alone or to find a ride home.

A few days before my accident, Wang Ping had another run-in with Chen Peng. It was a hot day, and I saw Wang Ping as she was leaving the break room after lunch. Her hair was wet and so was her T-shirt. I did not say anything to her, but I was not surprised when she later told me that Chen Peng had complained about her wet T-shirt. Wang Ping also laughed and said that if Hamilton had walked past her, the wet T-shirt would have guaranteed her a permanent job.

I was off work until June 30, 2008. I had talked to Wang Ping several times while I was off. I felt that she seemed to look much worse, and that she was apt to be frightened. Hearing even a little sound, she would nervously look around again and again. She seemed to have no sense of security at all. I worried about her and asked her what was wrong, and she suddenly cried and told me that Hamilton kept harassing her by asking her out, concerning her social life, and probably stalking her. She said that she had already coldly turned him down, but that he just wouldn't let go of her, and that Chen Peng mistakenly assumed that she was flirting with the boss. She said she was exhausted, guarding against Hamilton, being wronged by Chen Peng, struggling hard to hold on to her job. She said she did not know whether she could go on. When she called me on Sunday to ask me to go to work by bus together with her on Monday, she asked if we could leave early because she did not want to be late. I told her that I had to go to the Human Resources Department before I could start working

and that leaving early was a good idea. We got to the plant about twenty minutes early, and Wang Ping went directly to the workshop. I know that she started work before 8 A.M.

Later that day, I heard that Wang Ping had been fired. I know some other probationary workers had not been hired full time, but this was the first time I saw someone fired before the end of the sixty-day period.

I called Wang Ping later that day when I got home. Wang Ping said that when she heard Hamilton's announcement to fire her, she had loudly scolded Hamilton and said that she was fired because she had not gone out with him. Wang Ping said Hamilton made some comment about missing out on two good opportunities.

Li Manyu

August 15<sup>th</sup>, 2008

Exhibit 9:

### **Deposition of Chen Peng**

My name is Chen Peng, and I have worked at Pinnacle Packaging Products for sixteen years. When John Hamilton became workshop manager nine years ago, I replaced him as the foreman on two packaging lines. Li Manyu has worked on one of my lines for about four years.

When an opening occurred on the line, Li Manyu told me that she had a friend who was looking for a job. I told Li Manyu that she would have to talk to Hamilton because he made all of the hiring and firing decisions. A few weeks later, Wang Ping was hired.

According to our company's rules, all new employees are on probation for sixty days. Working on the packaging line can be hard work because you have to work quickly and lift some heavy packages. From the beginning, I had doubts whether Wang Ping would be able to handle the job.

During the first week, Wang Ping was being trained and frequently worked with another employee or me. I noticed that Wang Ping liked to talk and should have spent more time working. I started to make comments to Wang Ping to prod her to work faster.

Every employee is entitled to one fifteen-minute break in the morning and one in the afternoon plus thirty minutes for lunch. The line never

shuts down, so the employees are expected to take their breaks when things slow down or when someone can cover. We do not require employees to punch in and out for breaks. If someone starts abusing the break times, I will pass criticism on him.

Wang Ping had problems with the breaks almost from the start. Sometimes she would talk to other employees as they started or ended their breaks. Employees also may leave for quick breaks at times. Wang Ping seemed to think that she should not have to use her scheduled breaks to go to the break room.

At the end of Wang Ping's first week on the job, we went to a bar to celebrate my birthday. Wang Ping arrived with Li Manyu and left with Hamilton. We were seated at a table for one or two hours before they left. I did not see any touching between Hamilton and Wang Ping while they were at the bar. Neither of them appeared unhappy when they were leaving.

After Wang Ping was fired, I heard some allegations about Hamilton harassing her. Hamilton never told me that he asked Wang Ping out and never said anything to me about how I was treating her. I saw Hamilton and Wang Ping talking many times when he was walking through the workshop. Since Wang Ping was somewhat of a flirt, I just assumed she was trying to curry favor with the boss.

I gave Wang Ping her first written reprimand on June 2, 2008. It was

because she was not working quickly enough and was spending too much time away from her work station. If I give someone a write-up, the employee and I then meet with Hamilton to discuss the problem.

Our meeting with Hamilton was uneventful. He told Wang Ping that she would have to do a better job if she wanted to become a permanent employee after the probationary period. An employee must sign any reprimand and can add any comments. I left Hamilton's office when Wang Ping was signing the reprimand. Neither Hamilton nor Wang Ping said anything to me about any conversations that they may have had after I left his office.

Another day in that week, I verbally reprimanded Wang Ping for her appearance. It was hot in the workshop, and Wang Ping had rolled up the sleeves on her T-shirt and had tied up the bottom of the T-shirt so her belly was showing. I told her that her appearance was inappropriate and to untie the knot and roll the T-shirt down. Ma Xiaoqiang made some comment about how good Wang Ping looked, but I told him we were not at the beach.

A few days later, Wang Ping wore a T-shirt that said "If you can read this, you're staring." I told Wang Ping that she should not wear a T-shirt like that to work and to reverse it on her next break. Ma Xiangqiang again made some comment about making Wang Ping change the shirt immediately. Wang Ping was amused, but I was not.

Wang Ping's performance never changed significantly over the next week or so. Sometimes she worked harder, but I felt that she worked harder only when I was around. On June 11, 2008, Wang Ping was late for work. I gave her another write-up for being late, her overall job performance, and her inappropriate clothes.

I gave Hamilton a copy of the second reprimand, and he said that he would talk to Wang Ping. Things were busy that morning, and I did not attend the meeting between Wang Ping and Hamilton. I do not know what was said at the meeting, but later in the afternoon I saw Wang Ping approach Hamilton as he walked through the workshop. They spoke for a minute or two before he continued his rounds.

I had another problem with Wang Ping the following Monday. It was another hot day in the workshop, and Wang Ping must have poured water over her head during her lunch break. When I saw her at her work station, her hair and T-shirt were all wet. I told Wang Ping that her appearance was not appropriate, and Ma Xiangqiang again had to make some comment. I could tell that Wang Ping enjoyed the attention she was getting.

On Friday June 24, 2008, Wang Ping again was late for work. When I confronted her, she said she was stuck in a traffic jam. This was the second time that she had been late and her overall performance had not improved. Rather than giving her another write-up, I decided to talk to

Hamilton directly about the problem.

Friday was a busy day, and I did not have a chance to talk to Hamilton until after the employees had left. I told him that Wang Ping had been late again and that I thought she should be fired. We discussed all of the problems, and Hamilton said that he would fire Wang Ping when she came to work on Monday.

I prepared the final write-up and planned on giving it to Wang Ping when she came to work on Monday June 30, 2008. I did not see her come in, and I found her at the work station around 8:15 A.M. I gave her the reprimand and told Wang Ping that she had to see Hamilton immediately. I did not go to Hamilton's office, but later I saw security escorting Wang Ping out of the workshop.

A few weeks after Wang Ping was fired, Feng Jing from the Human Resources Department contacted me. She told me that Wang Ping had filed an application for arbitration with the Labor Dispute Arbitration Commission and claimed sexual harassment by Hamilton. I told Feng Jing that Hamilton never said anything to me about asking Wang Ping out and that all of the complaints about Wang Ping's performance came from me and not Hamilton.

To my knowledge, Wang Ping is the only probationary employee who was fired before the sixty-day period ended. I saw no reason to delay the decision because her performance was not improving.

Chen Peng

August 12th, 2008

Exhibit 10:

### **Deposition of Ma Xiaoqiang**

My name is Ma Xiaoqiang, and I have worked at Pinnacle Packaging Products since June 2001. Some time in May 2008, Wang Ping was hired by the company and assigned to my packaging line. John Hamilton is the workshop manager and Chen Peng is the foreman of my line and another line located nearby.

I am not good at remembering dates, but shortly after Wang Ping started we went out for drinks at a bar to celebrate Chen Peng's birthday. We were all standing around because the bar was crowded and there was no place for all of us to sit. I remember talking to Wang Ping briefly that evening, but I only stayed for one drink. I do not remember whether Hamilton got there before I left, but some of the employees were pushing tables together so they could sit down. I left before people got seated. On Monday, I did not hear any gossip about what may have happened after I left.

I have seen a number of people come and go from my packaging line. It can be hard work because you have to keep busy and lift some heavy boxes. Wang Ping is an average sized woman and had problems lifting some heavy boxes. She appeared to work hard and catch on to the program. I was not watching her all the time, and we were not partners.

However, she was doing a good job, especially for a new employee.

Wang Ping is very friendly and talked to anyone who was in the area. She also was attractive and somewhat of a tease. The workshop is not air conditioned and can get hot in the summer. One day, Wang Ping rolled up the sleeves on her T-shirt and tied the bottom of her T-shirt showing off some of her belly. Of course, the guys on the line approved of her appearance, and some comments were made. Wang Ping responded to some of the comments and seemed to enjoy the attention. A short time later, Chen Peng came to the line and told Wang Ping to untie the knot in her T-shirt. Wang Ping did what she was told, and some of the guys made a few comments to Chen Peng about spoiling the fun.

About one week later, Wang Ping wore a T-shirt that said “If you can read this, you’re staring.” Several comments were made by some of the guys. I made a comment about being a slow reader, and Lin Long said something about me being illiterate. Hamilton saw the T-shirt when he walked by. I could not hear what he and Wang Ping said, but they were laughing. Wang Ping seemed to enjoy the banter until Chen Peng showed up and complained about the T-shirt. He told her to turn the shirt inside out on her next break. I suggested that she make the change immediately, but Chen Peng was not amused.

One or two weeks later, Chen Peng was upset with Wang Ping after she returned from lunch. It was another hot day in the workshop, and

Wang Ping had put her head under the faucet or something to cool off. Her hair and T-shirt were wet when she returned to the work area. Of course, some of the other guys and I noticed and made some comments. I believe I suggested a company wet T-shirt contest. Wang Ping and another employee made some comments back to me, and I thought the incident was over. However, Chen Peng walked up and was noticeably upset by Wang Ping's appearance.

For some reason, Chen Peng seemed to have it in for Wang Ping almost from the start. We are entitled to a fifteen-minute break in the morning, another fifteen-minute break in the afternoon, and thirty-minutes for lunch. We do not have to punch a time clock for our breaks, and sometimes someone gets back a little late. Chen Peng seemed to be watching Wang Ping and noticed when she was not back to work on time or stopped to talk to someone while she was working.

Wang Ping never said anything to me about Hamilton. Whenever Hamilton walked through the workshop, Wang Ping made a point to talk to him. Their conversations were not long, and most of the time I could not hear what they were saying. I considered Wang Ping a flirt, and she acted that way with Hamilton.

I am aware that Wang Ping received some write-ups from Chen Peng and that she was called into Hamilton's office several times because of it. She never told me any details but did say that Chen Peng was picking on

her. I was surprised when Wang Ping was fired before her probationary period ended. I know of some people who were not hired full time after sixty days, but I am not aware of anyone who was not allowed to complete the probationary period. I thought that Wang Ping was trying hard and doing the best that she could. Some probationary employees who did not work as hard as Wang Ping were allowed to complete the sixty-day period before they were fired.

Ma Xiaoqiang

August 25<sup>th</sup>, 2008

Exhibit 11:

### **Deposition of Lin Long**

My name is Lin Long, and I have worked for Pinnacle Packaging Products since 2001. John Hamilton is the workshop manager, and Chuck Chen Peng is the foreman for two packaging lines. I have worked for Chen Peng since I was hired, and he always has treated me fairly.

In May 2008, Wang Ping was hired to work on my packaging line. All new employees are assigned to an experienced worker for training during the first week. Wang Ping was assigned to me for training. Wang Ping is not a strong woman and had problems lifting some heavy packages. However, she learned the job quickly and tried hard to do the job and keep the line moving. Sometimes Chen Peng would stop and help Wang Ping for a few minutes. I never heard Chen Peng criticize Wang Ping during the first week, and I told Chen Peng that Wang Ping could work without my help the next week.

Some of the employees were planning on going out for drinks that Friday to celebrate Chen Peng's birthday. I have two children at home and did not stop for a drink. To my knowledge, the party was uneventful because I did not hear any stories on Monday.

Wang Ping was working on her own after the first week. Wang Ping appeared to be working hard, but a new employee usually cannot keep up

with a more experienced employee. Wang Ping still had some problems with heavier boxes, but that also improves over time.

We are entitled to two fifteen-minute breaks during the day and thirty minutes for lunch. Employees are expected to use the bathroom on a break, but we can leave the line if things slow down to go to the bathroom or to get a drink of water. We do not have to punch a time clock for any breaks.

It is not unusual for employees to stretch a break by a few minutes. Chen Peng will make a comment if the breaks are abused. Wang Ping is very friendly and talked to anyone who was in the area. Wang Ping is lovely and pretty, and is always ready help, so everybody likes her. She frequently took more than fifteen minutes for a break, but it seldom was more than twenty minutes.

John Hamilton walks through the workshop several times a day. It seemed as though Wang Ping and Hamilton always had something to say to each other. They never talked long, but Hamilton talked to Wang Ping more than the rest of us.

Wang Ping complained to me about Chen Peng many times before she was fired. Wang Ping felt like he always watched her and picked on her for any little thing. Wang Ping was not the best employee, but she was trying hard and getting better.

Wang Ping never said any thing to me about Hamilton asking her out

or bothering her. But on time I accidentally saw through the window that Hamilton was touching Wang Ping's waist and that Wang Ping turned away, seemingly to escape from the touch.

Wang Ping was verbally reprimanded by Chen Peng for her appearance three different times. I cannot remember the exact dates. The first time was a hot day in the workshop, and Wang Ping had rolled up her sleeves and tied a knot at the bottom of her T-shirt. Wang Ping was showing a lot of skin and drawing the attention of the guys on the line. Ma Xiaoqiang was working next to Wang Ping, and he was making some comments. I could not hear what Chen Peng said, but Wang Ping untied the knot and rolled down her sleeves.

The second incident occurred about one week later. Wang Ping came to work wearing a T-shirt that said "If you can read this, you're staring." Ma Xiaoqiang made a comment about being a slow reader, and I told him he was illiterate and not a slow reader. Hamilton walked past and saw Wang Ping's T-shirt. I could not hear the comments, but Hamilton, Ma Xiaoqiang and Wang Ping were laughing. Things seemed to have settled down when Chen Peng came around. I could tell that he was not pleased with Wang Ping. After her next break, Wang Ping was wearing the T-shirt inside out.

The third incident occurred on another hot day in the workshop. Wang Ping must have held her head under a faucet because her hair and

T-shirt were wet when she returned from lunch. Once again, Ma Xiaoqiang had some comments, and I told him he needed to be hosed down. Chen Peng showed up a few minutes later. I could not hear what he said, but I could tell by his facial expressions that he was not pleased.

I know that Chen Peng gave Wang Ping several write-ups and that she went to Hamilton's office to talk to him and sign the paper. Once Wang Ping was very upset when she came back to the line, but she did not tell anything about it. It seemed like nothing serious happened in Hamilton's office because Wang Ping and Hamilton continued to exchange greetings and talk when he walked past the line. I remember what happened on June 30, 2008, because it really was a special day. I arrived at the workshop around 8 A.M. that day. When I arrived, I found Wang Ping have already been there. She said hi to me but didn't look as happy as usual. I still remember that I said "You are very early today", and that she answered that "Ms. Lin, I am afraid I have to take a sick leave for a few days. I went to see a doctor last weekend and he suggested that I take a rest for a few days." Chen Peng came up to Wang Ping that morning. He took Wang Ping to one side with a piece of paper in hand, which I guess was a write-up. They seemed that they were arguing. And later, Wang Ping went to Hamilton's office in a huff. And suddenly, loud cries came out of the office. I saw through the window that Wang Ping was yelling, a bit beside herself. Soon security escorted her out. I have never seen Wang

Ping at the workshop since that day.

I was surprised when I learned that Wang Ping was fired. Other probationary employees have had problems, and all of them were allowed to complete the sixty-day period.

Lin Long

August 10<sup>th</sup>, 2008

Exhibit 12:

### **Deposition of Feng Jing**

My name is Feng Jing, and I have been the Human Resources director since January 1999 for Pinnacle Packaging Products, Inc. Part of my duties include processing the paper work for employees who are joining or leaving the company. I also am responsible for implementing our EEOC, Equal Employment Opportunity Commission program. It is against company policy to discriminate against any employee because of race, gender, or national origin. This policy also forbids any form of harassment.

Each new employee receives an Employee Handbook which explains our EEOC policy and how to report any violations. Employees are encouraged, but not required, to report any problems to their immediate supervisor. The handbook also tells employees that they may file a complaint directly with the Human Resources Department.

My office is in the administration building adjacent to the workshop. All new employees come to the Human Resources Department when they are hired to complete the required paperwork. Employees also come to my office if they have any questions about their paychecks or fringe benefits. Every employee knows where the Human Resources office is located.

The workshop has fewer than fifty employees, and the work force is fairly stable. I know all of the employees by name. I do not go to the workshop every day, but I always talk to employees if I see any of them in the break room.

I completed the paperwork for Wang Ping when she was hired and gave her a copy of the employee handbook. On more than one occasion, I saw Wang Ping when I was in the workshop. Wang Ping never said anything to me about any sexual harassment claims involving John Hamilton. She never filed any formal complaints with the Human Resources office before she was fired.

I also am in charge of maintaining the employee personnel files. If an employee receives a written reprimand or any other disciplinary action, I receive a copy and place it in the employee's file. I am not notified if the employee only receives a verbal warning or reprimand.

If the employee disagrees with a write-up, the employee can put a comment on the written reprimand. I am not responsible for investigating any disputes over reprimands unless they involve a potential violation of the company EEOC policy. If Wang Ping had commented on any of her reprimands that Hamilton was harassing her because she would not go out with him, I would have conducted an investigation.

Wang Ping was making 1,200 yuan per month when she was fired. According to the company's policy, all new employees have to work at a

workshop on a probationary status for 60 days and will be arranged a new job post after the probation period. Wang Ping was assigned to work on a packing line at the workshop during probation. And she was scheduled to work for 8 hours a day, 40 hours a week, with a half-hour lunch break and one 15-minute break in the morning and another in the afternoon respectively. The monthly salary for employees on probation is RMB 1,200 yuan. If Wang Ping had had completed her sixty-day probationary period, she also would have received medical insurance. When she would have become a permanent employee of the company, she could have worked with the purchasing department, receiving 1,500 yuan per month. One year later, Wang Ping would have received another pay raise, in addition to some bonus for good performance.

I was not aware of any problem between Hamilton and Wang Ping until I received a copy of the Application Wang Ping filed with the West Lake District Labor Dispute Arbitration Commission. I was in charge of the company investigation and talked to Hamilton, Chen Peng, and several employees who worked with Wang Ping. During my tenure as Human Resources director, several probationary employees were not hired as full time employees after completing the probationary period. Wang Ping is the only one who was fired before the sixty-day period ended.

Feng Jing

August 20<sup>th</sup>, 2008

Exhibit 13:

**Medical Diagnosis Certificate of Wang Ping**

THE FIRST AFFILIATED HOSPITAL, COLLEGE OF MEDICINE,

ZHEJIANG UNIVERSITY

THE FIRST HOSPITAL OF ZHEJING PROVINCE

**Medical Diagnosis Certificate**

(This certificate is invalid without the special seal of medical diagnosis.

— for outpatients only)

Name: Wang Ping      Sex: female      Age: 22

Company:

Pinnacle Packaging    Case No.

Products, Inc.

Identification: Light depression

Suggestion for treatment: Suggest a three-day rest.

Psychiatric

Department

Doctor: Xu Yi

Date: June 28<sup>th</sup>, 2008