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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANGELINA SAMPSON, an individual,
BRODIE KNOX, an individual, and
MATTHEW JOHNSON, an individual,
Plaintiffs for themselves and on behalf of
all others similarly situated,

and

RIRCHARD LANDRETH, an individual,
Plaintiff for himself and on behalf of all
others similarly situated,

 Plaintiffs,

 v.

JELD-WEN, INC., a Delaware
Corporation doing business in Washington
State,

 Defendant.

No. 1:15-cv-03025-SAB

**ORDER DENYING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

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**ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT AND GRANTING DEFENDANT'S MOTION . . . ^ 1**

1 **INTRODUCTION AND POSTURE**

2 Before the Court are the parties’ cross-motions for summary judgment, ECF
3 Nos. 15 (Defendant) & 19 (Plaintiff). The Plaintiffs, four individuals who worked
4 as managers at Defendant corporation Jeld-Wen, Inc. (“Jeld-Wen”), sued Jeld-
5 Wen for the denial of annual bonuses, under causes of action for (1) breach of a
6 modified contract based on an employee handbook and (2) breach of a promise of
7 specific treatment in specific circumstances based on an employee handbook. The
8 case was removed from Yakima County Superior Court by diversity jurisdiction.
9 The parties jointly agreed to pursue discovery and summary judgment on the issue
10 of liability, and then to proceed, if needed, to issues of class certification.

11 The Court has reviewed the motions, as well as the associated responses,
12 replies, statements of fact, declarations, affidavits, exhibits, and deposition
13 excerpts. Additionally, the Court held a hearing on December 16, 2015, where
14 both parties presented oral argument on the matter. Being fully informed, the
15 Court **denies** the Plaintiffs’ motion for summary judgment and **grants** the
16 Defendant’s motion for summary judgment, for the reasons below.

17 **MATERIAL FACTS**

18 The Court makes its decision on the following facts.¹ The four Plaintiffs,
19 Angelina Sampson, Brodie Knox, Matthew Johnson, and Richard Landreth,
20 worked as managers at Jeld-Wen, a Delaware corporation based in Oregon. Jeld-
21 Wen is an international company that fabricates windows and fixtures. Jeld-Wen
22 maintained two facilities in Yakima; the Plaintiffs were employed in a vinyl
23 extrusion plant in Yakima at the time of the events of the case.

24 Three of the Plaintiffs had signed written, at-will employment contracts with
25 Jeld-Wen around early 2006; the fourth signed the contract in 2007, and never saw
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27 ¹ As Plaintiffs’ counsel pointed out at oral argument, the material facts are not in dispute, and one party’s motion
28 should be granted. Some facts regarding notice of and reliance on the 2006 Memo are in dispute, but these facts are
immaterial, as shown below.

1 the bonus memo in question. ECF Nos. 17-5—17-8. These contracts state that
2 “[e]ach year the Board [of Jeld-Wen] makes general decisions regarding
3 compensation, benefits, and other employment terms and conditions, which are
4 subject to change at any time if the Board determines that change is warranted for
5 any reason.” Id. The signed agreements continue that “[b]onuses are based, in part,
6 on the full-year profitability of your division and JELD-WEN as a whole. If
7 neither is profitable, bonuses generally are not paid. Your bonus, if any, will be
8 determined by the Board of Directors, at its sole discretion. Factors which may
9 influence the Board include: the extent of profitability of your division or the
10 Company overall, your level of responsibility, and your performance during the
11 calendar year.” Id. Jeld-Wen historically offered a generous bonus program to
12 recruit skilled employees.

13 On January 31, 2006, Jeld-Wen Chief Operating Officer Barry Homrighaus
14 distributed a memorandum to all Jeld-Wen managers (“2006 Memo”) that
15 explained changes to the manager bonus program. (This memo forms the basis of
16 Plaintiffs’ claims.) The 2006 Memo states that its purpose was to allow the
17 company to “recruit and retain the best people and reward our best performers
18 appropriately” while eliminating “the need for exceptions, special deals, or
19 ‘guarantees.’”

20 The 2006 Memo appears with Jeld-Wen letterhead, and is addressed to “All
21 Managers, Jeld-Wen Window Group.” ECF No. 18-5. It sets bonus payout ranges,
22 as a percentage of a manager’s annual salary, based on the profitability of a
23 manager’s plant. The memo uses operative language such as “will,” and contains a
24 table illustrating five profit categories, covering all possibilities of profitability.
25 The five categories, “with few exceptions,” are the qualifying profitability levels.
26 The memo also states that other considerations, such as “employee safety, quality,
27 [and] customer service,” effect where in the range the actual bonus will be.

1 The Court neither weighs evidence nor assesses credibility when
2 considering a motion for summary judgment; rather, “[t]he evidence of the non-
3 movant is to be believed, and all justifiable inferences are to be drawn in his
4 favor.” Anderson, 477 U.S. at 255. When relevant facts are not in dispute,
5 summary judgment as a matter of law is appropriate, Klamath Water Users
6 *Protective Ass’n v. Patterson*, 204 F.3d 1206, 1210 (9th Cir. 1999), but “[i]f
7 reasonable minds can reach different conclusions, summary judgment is
8 improper.” *Kalmas v. Wagner*, 133 Wn.2d 210, 215 (1997).

9 This Court, sitting in diversity, applies state substantive law as promulgated
10 by the Washington Supreme Court. When interpreting employment policies in
11 Washington, if reasonable minds cannot differ in concluding that a document
12 constitutes an offer (in the context of a claim for implied contractual modification)
13 or a promise of specific treatment (in a specific treatment context), the promise can
14 be part of the employment relationship as a matter of law. *Bulman v. Safeway, Inc.*,
15 144 Wn.2d 335, 351 (2001).

16 CLAIM FOR BREACH OF CONTRACT

17 The Court first discusses the Plaintiffs’ claim for breach of contract, where
18 the contract has been modified by the introduction of an employee handbook.² The
19 claim is based on the holding that an employee handbook or policy guide can
20 modify the original employment contract and become binding on both parties.
21 *Gaglidari v. Denny’s Restaurants, Inc.*, 117 Wn.2d 426, 433 (1991). The plaintiff
22 must prove that the elements of contract formation exist in the modification;
23 specifically, that offer, acceptance, and consideration were present. *Swanson v.*
24 *Liquid Air Corp.*, 118 Wn.2d 512, 523 (1992).

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26 _____
27 ² This claim is distinct from a claim for promise of specific treatment in specific circumstances based on an
28 employee handbook. These two claims are frequently brought together in cases where the facts involve employee
handbooks, memos, or manuals, and are frequently confused, or pled in an intertwined manner. See *DePhillips v.*
Zolt Constr. Co., 136 Wn.2d 26, 34 (1998).

1 The Supreme Court of Washington has held that an employee handbook can
2 provide the predicate for a contract modification. *Gaglidari*, 117 Wn.2d at 433
3 (citing *Pine River State Bank v. Mettill*, 333 N.W.2d 622 (Minn. 1983)). Offer
4 can be found where the employer gave plaintiff a manual or handbook; the
5 language in the handbook can constitute an offer. *Id.* The employee's retention of
6 employment with the employer can constitute acceptance. *Id.* Consideration can be
7 found when the plaintiff continues to work for the employer. *Id.* at 433-34.

8 If these elements are met, a trier of fact can find that the handbook modified
9 the initial employment contract. It is a factual determination whether a handbook
10 contains sufficient contractual terms to modify the previous employment contract,
11 and whether the parties intended an employee handbook to modify the
12 employment contracts. *Swanson*, 118 Wn.2d at 524. However, if reasonable minds
13 could reach but one conclusion on these issues, summary judgment as matter of
14 law is proper. *Id.*; *Bulman*, 144 Wn.2d at 351.

15 The original employment contracts are clearly binding on Plaintiffs and
16 Defendant, as admitted by both parties. The Court finds that the 2006 Memo
17 modified these original, binding employment contracts. *Gaglidari*, 117 Wn.2d at
18 433, and the more recent *Storti v. University of Washington*, 181 Wn.2d 28, 35-38
19 (2014), are instructive on this issue. A contract can be unilaterally modified, and
20 substantial performance may constitute acceptance. *Storti*, 181 Wn.2d at 36.
21 Sufficiently strong language in an employee handbook can constitute offer, and
22 the continuing work of employees after the introduction of the handbook can
23 constitute acceptance. *Id.*

24 The case at hand is analogous. The language in the 2006 Memo was definite
25 enough to constitute an offer; it provided comprehensive descriptions and
26 examples of the bonus program, and used the type of language that indicates an
27 intent to be bound, per the Washington Supreme Court. For example, the Memo
28 states that bonus payouts “will be based on the success of the organization,” that

1 “each manager will have a ‘maximum bonus opportunity,’” and that “the managers
2 of a plant will qualify for a bonus range[.]” ECF No. 18-5 at 3. Accord *Storti*, 181
3 Wn.2d at 26 (“[F]aculty ‘shall’ undergo yearly evaluations and ‘shall’ be awarded
4 a two percent raise”); see also *Stewart v. Chevron Chem. Co.*, 111 Wn.2d
5 609, 609 (1988). The contract further specifies that it seeks to eliminate special
6 deals, exceptions, and guarantees, indicating that the intent behind Jeld-Wen
7 management was to bind all managers to a universal bonus system. This is
8 sufficient to find an offer, based on case law in Washington State.

9 Furthermore, the Plaintiffs substantially performed, as the plant in question
10 remained profitable.³ Given that Washington adopted substantial performance as a
11 form of acceptance for unilateral contracts in *Storti*, 181 Wn.2d at 36, the Court
12 must conclude that acceptance occurred. Consideration was provided when the
13 Plaintiffs stayed at the job after the 2006 Memo was circulated. Thus, reasonable
14 minds can conclude only that, as a matter of law, the original contracts were
15 modified by the 2006 Memo. *Swanson*, 118 Wn.2d at 523.

16 However, as discussed below, the 2006 Memo was not a new, independent
17 contract; it only modified the existing employment contracts between Plaintiffs
18 and Defendant. And in light of the claims in this case, the contract must be
19 interpreted in “accordance with all of [its] terms.” *Wagner v. Wagner*, 95 Wn.2d
20 94, 101-02 (1980). Contract interpretation is a matter of law, to be decided by the
21 Court. *Stewart*, 111 Wn.2d at 613-14.

22 The question thus becomes whether reasonable minds could disagree that
23 the contract modification, read with the original contracts, divested Jeld-Wen of
24 the discretion to grant or deny bonuses. That cannot be the case. The original
25 employment contracts and the 2006 Memo can only be read together, and the
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28 ³ Defendant’s claim that the Plaintiffs have no ability to perform and insure the profitability of a plant strikes the Court as incorrect. Why else offer a bonus program predicated on profitability in the first place?

1 original employment contracts were explicit that Jeld-Wen retained discretion to
2 deny bonuses, and indeed to control compensation in all ways.

3 The 2006 Memo does not conflict with the initial reservation of discretion
4 on part of Jeld-Wen. There is a harmony in viewing the detailed profitability
5 criteria in the 2006 Memo as an explication of the vague profitability condition
6 described in the original employment contracts. And the contracts were signed
7 almost contemporaneously, which further suggests their intertwined nature.

8 Because the only reasonable way⁴ to read these documents as one is to view
9 the 2006 Memo as an in-depth explanation of the functioning of the discretionary
10 bonus system, Jeld-Wen did not breach the employment contracts by exercising
11 the discretion to deny bonuses it retained in the initial contract, and the claim must
12 be **dismissed**. Accord *Storti*, 181 Wn.2d at 38-40 (where read with modification,
13 contractual documents retained discretion and no breach found).

14 **CLAIM FOR BREACH OF PROMISE OF SPECIFIC TREATMENT IN**
15 **SPECIFIC SITUATIONS**

16 A claim for breach of a promise of specific treatment in specific situations
17 (“STSS”) is entirely separate from a breach of contract claim, and includes a
18 reliance element. A promise under this claim, through an employee handbook, can
19 be enforceable where an employer uses the handbook to create an atmosphere of
20 job security and fair treatment, and the promise in the handbook induces the
21 employee to remain on the job and not seek other employment. *Thompson v. St.*
22 *Regis Paper Co.*, 102 Wn.2d 219, 230-31 (1984) (en banc). To prevail, a plaintiff
23 must prove “(1) that the statements in the policy manual amounted to promises of
24 specific treatment in specific situations, and (2) that the plaintiff justifiably relied
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26 ⁴ The Court considered each motion for summary judgment separately. *Tulalip Tribes of Wash. v. Washington*, 783
27 F.3d 1151, 1156 (9th Cir. 2015). For purposes of the Defendant’s summary judgment motion, even when all of the
28 facts and inferences are viewed in the light most favorable to Plaintiff, reasonable minds could only rule for the
Defendant. Likewise, when the Court viewed all facts and inferences in favor of Defendant when considering
Plaintiff’s motion, the Court holds that no reasonable trier of fact could find for Plaintiffs.

1 upon any such promise, and (3) that the promise of specific treatment was
2 breached.” *Bulman v. Safeway, Inc.*, 144 Wn.2d 335, 344 (2001). All three
3 elements are questions of fact. *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 105
4 (1994). “The issues may be decided as matters of law, however, if reasonable
5 minds could not differ in resolving them.” *Id.* The Court may dismiss claims as a
6 matter of law in a motion for summary judgment based on the running of the
7 statute of limitations. *Goodwin v. United States*, 935 F.2d 1061, 1066 (9th Cir.
8 1991). Indeed, the statute of limitations requires the Court to dismiss this claim,
9 regardless of the questions of fact surrounding the elements of the Thompson
10 claim.

11 The Plaintiff filed the complaint in Yakima County Superior Court on
12 January 14, 2015. ECF No. 1. The alleged breach of contract occurred on January
13 16, 2009. This puts the time passed at two days under six years. The statute of
14 limitations for actions based on “a contract in writing, or liability express or
15 implied arising out of a written agreement,” is six years. RCW 4.16.040(1).
16 Otherwise, a three-year statute of limitations applies to contract claims “not in
17 writing.” RCW 4.16.080(3).

18 The issue is whether a Thompson claim based on an employee handbook
19 can use the six-year statute of limitations. The Court turns to *DePhillips v. Zolt*
20 *Constr. Co.*, 136 Wn.2d 26, 30-31 (1998), the leading case on the matter. The
21 *DePhillips* court analyzed the employee handbook in question for the existence of
22 the elements of a contract, per *Family Med. Bldg., Inc. v. Dep’t of Soc. & Health*
23 *Servs.*, 104 Wn.2d 105, 108 (1985), and, finding the elements lacking, applied the
24 three-year statute of limitations.

25 Though *DePhillips* is ultimately somewhat ambiguous,⁵ the Court concludes
26 that the availability of the six-year statute of limitations depends on the presence

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28 ⁵ Compare *DePhillips*, 136 Wn.2d at 38 (“[A] claim based upon the Thompson theory . . . is not a claim based upon
a contract in writing subject to a six-year limitations period.”), with *id.* at 37 (referring to a Thompson claim and

1 of the elements of a contract in the handbook or policy manual. These elements are
2 not present in the 2006 Memo: the memo does not identify the Plaintiffs
3 specifically. DePhillips, 136 Wn.2d at 31; *see also Wise v. Verizon Commc 'ns,*
4 *Inc., No. C08-409MJP, 2008 WL 4426829, at *2 (W.D. Wash. Sept. 26, 2008)*
5 (“Nowhere does [the document] identify Plaintiff by name.”). There are no
6 signatures on the memo, and the memo, standing alone, does not sufficiently
7 describe the work Plaintiffs would do, or their compensation thereby, to constitute
8 a contract. Thus, the three-year statute of limitation provided by RCW 4.16.080(3)
9 applies, and because the claim was filed outside the statute, the Plaintiffs’
10 Thompson claims are **dismissed**.

11 **CONCLUSION**

12 For the above reasons, Defendant’s Motion for Summary Judgment is
13 **granted**, and Plaintiffs’ claims for breach of contract and breach of promise for
14 specific treatment in specific circumstances are dismissed.

15 Accordingly, **IT IS HEREBY ORDERED:**

16 1. Plaintiff’s Motion for Summary Judgment, ECF No. 19, is **DENIED**.

17 2. Defendant’s Motion for Summary Judgment, ECF No. 15, is

18 **GRANTED**.

19 3. The District Court Executive is directed to enter judgment in favor of
20 Defendant and against Plaintiffs.

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27 stating “unless all the essential elements of a contract are in the [employee handbook], an action premised on express
28 or implied liability arising out of the writing are not subject to the six-year limitation period”). This Court concludes
that because the DePhillips court examined the document in question, the six-year statute of limitations can be
applied to Thompson claims when the elements of a contract are present in the handbook.

**ORDER DENYING PLAINTIFFS’ MOTION FOR SUMMARY
JUDGMENT AND GRANTING DEFENDANT’S MOTION . . . ^ 10**

1 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
2 file this Order, provide copies to counsel, and **close** the file.

3 **DATED** this 18th day of December, 2015.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

9 Stanley A. Bastian
10 United States District Judge