UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

SHIRLEY WILLIAMS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 03-2200-JWL
	)	
SPRINT/UNITED MANAGEMENT COMPANY,	)	
	)	
Defendant.	)	

REVISED SECOND AMENDED COMPLAINT

COME NOW Plaintiffs Shirley Williams and all Opt-In Plaintiffs, by and through counsel, and file this Second Amended Complaint per court Order of November 1, 2005 (Doc. # 3410). For their causes of action against Defendants Sprint/United Management Company and Sprint Corporation, Plaintiffs and all Opt-Ins allege and aver as follows:

GENERAL ALLEGATIONS

1. Plaintiff Shirley Williams ("Williams") is a citizen and resident of the State of Kansas. Plaintiff Williams was 59 years of age at the time her employment was terminated by defendants on or about March 13, 2002.

2. The following individuals have filed lawsuits alleging ADEA violations against defendants, and per Court Order and/or on their own all have filed timely Consents opting into this action for purposes of their ADEA claims: John Borel, Steve Constance, Terry Lee Cocherl, Sharon Herren, Carol Kippes, Sharon Miller, David Molz, Carolyn Selberg, Peggy Sturgess, and Yvonne Wood-Olson.

3. Defendants Sprint/United Management Company and Sprint Corporation (hereinafter collectively referred to as "Defendants" or "Sprint") are corporations which are currently in good standing and which are duly registered to do business in the State of Kansas

and which were doing business in the State of Kansas at all times relevant to this lawsuit. Defendant Sprint Corp. may be served by and through its registered agent, Corporation Service Company, 200 S.W. 30th Street, Topeka, KS 66611, or through its counsel of record.

4. This Court has jurisdiction over this action by virtue of 28 U.S.C. § 1331, in that it arises under the laws of the United States of America, namely, the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. and other federal law.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) by virtue of the fact that a substantial part of the events or omissions giving rise to the claims set forth herein occurred in the State of Kansas and that defendant is registered to do and is doing business in the State of Kansas, subjecting it to personal jurisdiction in this action and making it a "resident" of this judicial district pursuant to 28 U.S.C. § 1391(c).

6. Defendants Sprint/United Management Company and Sprint Corp. constitute, and constituted at all times relevant to this action, an "employer" as defined in 29 U.S.C. § 630(b) and 42 U.S.C. §§ 12111.

ALLEGATIONS SUPPORTING COLLECTIVE ACTION
(29 U.S.C. §§ 626(b) and 216(b))

7. Beginning in mid-2001 and extending at least through the end of the first quarter of 2003, Sprint planned and implemented several phases of a "reduction in force" ("RIF") purportedly intended to eliminate job functions and to reduce costs.

8. Sprint engaged in a pattern and practice of age discrimination in connection with the RIF for this time period, including setting up a "sham" process for displaced workers to "reapply" for open positions within Sprint, resulting in situations where applicants 40 years of age and older were not given the same consideration as younger employees and where applicants over 40 years of age were denied even the opportunity to interview for such open positions.

Sprint also engaged in a pattern and practice of age discrimination in hiring new employees into positions for which recently RIF'd employees were fully qualified.

9. Also in connection with the RIF, Sprint engaged in a pattern or practice of age discrimination and otherwise treated younger employees more favorably than older employees, including (but not limited to) the following specific actions:

a. Transferring younger employees (i.e., those under the age of 40) to "safe" positions before and during the RIF process;

b. Identifying certain younger employees (i.e., those under the age of 40) as "key talent" and making extraordinary efforts to exempt them from the RIF;

c. Transferring older workers (i.e., those 40 years of age and older) to jobs or departments which were to be phased out or eliminated as part of a future reorganization;

d. Consciously deciding not to comply with the "Older Workers Benefit Protection Act" ("OWBPA") for certain job grades, in order to avoid having to disclose demographic data and its "selection criteria" to those affected by the RIF;

e. Filling "open" positions within departments with younger employees (i.e., under the age of 40) just before the RIF, then terminating older workers (i.e. those 40 years of age and older) in the same or similar positions as part of the RIF;

f. Providing "spreadsheets" or templates" to managers to use in making termination decisions, which spreadsheets or templates included, or were

designed to include, improper factors such as age, date of birth, and other age-related criteria;

g. Providing hidden data links, within such spreadsheets and templates, that allowed managers to access improper criteria, such as age, date of birth, and other age-related data, for use in making RIF decisions; and,

h. Failing, on a continuing basis, to rehire Plaintiffs and Opt-In Plaintiffs, post-RIF, for jobs they were qualified to fill.

10. Also in connection with its RIF, Sprint implemented a new "alpha rating" or "forced ranking" performance review system in early 2002 which was secretly intended to provide justification for termination decisions to be made as part of the RIF. With respect to this new performance rating system, Plaintiffs allege the following pertinent facts:

a. Through the end of 2001, most Sprint employees were given an overall performance rating on a scale of 1-5, with 1 being the best and 5 being the worst;

b. The vast majority of Sprint employees evaluated through the end of 2001 received at least a rating of "3" under this method; a "3" rating signifies performance that "fully met" the employer's expectations;

c. In late 2001, Sprint began discussing a new "alpha-rating" system which, among other features, would utilize the forced ranking method (using a "Bell-shaped curve") lionized by Jack Welch of GE to rate and compare employees;

d. One of Sprint's intentions in adopting, and/or a result of Sprint adopting the new "alpha rating" system was that more older employees were

identified as “poor performers” within the organization, while a disproportionate percentage of younger employees improved their ranking under the stack ranking or forced distribution system;

e. Despite clear warnings from its own employees studying the new rating system before implementation that such a system “does not pretend to be objective,” and could lead to age discrimination, Sprint decided to move forward with the “alpha rating system” in late 2001 and early 2002;

f. Under this new rating system, Sprint managers were directed to give a “shadow rating” to all exempt employees, as their 2001 “numeric” ratings had already been or were being determined;

g. Sprint officially announced this new “alpha rating” system on or about December 21, 2001;

h. Sprint employees were told ***in writing*** that the new 2002 alpha rating system would not be recorded, “would not affect compensation” in 2002, and “would not become a part of any employee’s permanent record”;

i. Nevertheless, Sprint managers were expressly directed to use “shadow ratings” as one of the selection criteria for RIF decisions and, contrary to Sprint’s express representations to employees, alpha ratings were recorded in the CMR and possibly other databases and/or appeared in written records;

j. Sprint managers made RIF decisions based upon the lower “alpha ratings” given to employees over the age of 40 who had received overall numeric ratings of “3,” or better;

k. The “shadow ratings” given to employees in 2002 were an important factor used in the selection process for the RIF that occurred in 2002 and 2003;

l. Sprint conducted an “After Action Review” of the new alpha rating system which confirmed earlier warnings that the system would result in claims of age discrimination;

m. Sprint thus added a new, vague and subjective rating criteria without adequate training or communication as to proper usage;

n. Sprint added a “calibration” process to this new rating system which was highly subjective and allowed inherent conflicts of interest to occur; and

o. Sprint thus forced distribution of ratings into pre-determined quotas which increased the pool of employees in poor performer categories from 2% to 30%.

11. Although Sprint professed to determine the “impact” of actual and proposed job cuts upon various discrete groups of employees, including employees over the age of 40, Sprint has shielded and refused to disclose such information from many of its employees, and from others outside the organization, under a claim of “attorney-client” privilege.

12. Nevertheless, data provided through Sprint’s “human resource information system” (HRIS) confirms that, during various time frames relevant to this action:

a. Employees aged 40 and older have been ***disproportionately more likely*** to be terminated as part of a RIF at Sprint than employees under the age of 40;

b. Employees aged 40 and older, who had previously been rated higher under

the numeric rating system were less likely to retain their good ratings under the alpha rating system than were employees under the age of 40; and,

c. Employees aged less than 40 were disproportionately more likely to improve their ratings under the alpha rating system and/or to retain the highest categories of ratings under the alpha system.

13. The alpha rating system had a disparate impact on persons age 40 and over, and defendants have no reasonable factor other than age to explain that disparate impact.

14. Furthermore, Sprint's own "After Action Review" of the new alpha rating system confirmed that:

a. the system was subjective, arbitrary, non-substantive, dishonest, and inaccurate;

b. The system was biased against older (over age 40) workers; and

c. The system was inequitable and inappropriate because of pool size and composition.

15. Shirley Williams and Opt-in Plaintiffs received inconsistent, false, and age-discriminatory alpha reviews which ultimately led to these plaintiffs and many others similarly situated being adversely affected in the RIF.

16. All plaintiffs and opt-in plaintiffs were subjected to defendants' culture change which occurred at least by 2001 and which stressed and preferred youth. Through use of code words such as "long runway," "high energy," and through other means, the message from Defendants' Corporate Office, Human Resources officials, Executives, and other personnel was that the company was to become more youthful and younger.

17. Defendant Sprint's RIF Guidelines were subjective, inadequate and/or were unknown or not followed. Further, they placed subjective performance ratings – not excluding alpha, shadow ratings – at or near the top of the factors to be considered in the order of importance.

18. Defendants' Human Resources Department inadequately responded to age discriminatory conduct, including that in connection with the RIF.

19. Defendants' Human Resources Department and/or other personnel failed to adequately train and/or monitor executives and/or management with regard to RIF decisions to assure that age discriminatory conduct did not occur.

20. In addition to the foregoing facts, plaintiffs are "similarly situated" in that:

a. All are over 40;

b. All were terminated by Sprint as part of a reduction in force that spans the relevant time frame of July 2001 through March 31, 2003;

c. All were and/or should have been identified by "Separation Code" 63 in Sprint's human resource information system database (or some other code that indicates a non-performance-related reason for termination);

d. All were satisfactory (or better) performers just before the RIF;

e. All have the same or similar retirement benefit plans – with the same age and service formulas;

f. All have the same or similar medical (and other) benefits;

g. All were purportedly subject to the same "Displacement Guidelines" and standards for deciding during a RIF which employees would stay and which would go when choosing among more than one "incumbent";

h. All were subjected to a RIF overseen by Human Resource Sprint personnel, which department inadequately trained decision-makers with regard to avoiding and remedying age discrimination, and ensuring equal employment opportunity;

i. All were subjected to a RIF infected by Sprint management's culture of bias and/or stereotypes in favor of youth and against age;

j. All exempt salaried employees had the same alpha and numeric performance evaluation systems in place at the particular time they were RIF'd;

k. For all persons over 40 who were RIF'd, younger persons were not RIF'd, despite having the same or similar job duties or classifications;

l. Most are exempt, salaried employees, although some are non-exempt;

m. Most are job grade 71-79, although some are E-grade level; and

n. All Plaintiffs and Opt-In Plaintiffs were discriminated against based on their age in connection with Sprint's RIF.

ADDITIONAL ALLEGATIONS REGARDING PLAINTIFF SHIRLEY WILLIAMS

21. Plaintiff Williams began her employment with Sprint in or about November of 1998 as an Associate Analyst.

22. Plaintiff Williams worked for Sprint from November of 1998 to and including March 13, 2002.

23. During her employment with Sprint, Plaintiff Williams performed her job duties satisfactorily, received numerous satisfactory performance appraisals and received periodic raises in pay.

24. In August of 1999, Plaintiff Williams was promoted to the position of Analyst.

25. In September of 2001, Plaintiff Williams received a satisfactory performance appraisal and was designated to receive a five (5) percent pay increase as a result of her job performance.

26. Shortly after this satisfactory performance appraisal, Plaintiff Williams learned that she had been listed as a potential witness in a disability discrimination lawsuit brought by a former co-worker of Williams against Sprint.

27. On or about November 28, 2001, Plaintiff Williams was interviewed by counsel representing defendants in connection with the disability lawsuit brought by a former co-worker of Williams against Sprint.

28. During this interview, Plaintiff Williams disclosed information that was generally supportive of the former co-worker, and disclosed the existence of a memo she wrote to her supervisor, Lorrie McCurdy (who was also a supervisor of the person bringing the other legal action against Sprint).

29. Shortly after her participation in this interview with counsel for Sprint, Plaintiff Williams began to receive unwarranted negative comments about her work performance.

30. On at least two occasions after her participation in the interview with counsel for Sprint concerning the co-worker's legal action, Plaintiff Williams applied for Analyst positions, but was denied these promotions (in favor of younger, less-qualified candidates).

31. Plaintiff Williams applied for a Senior Analyst position in the Tables Department and was interviewed for this position on August 13, 2001; Plaintiff Williams later learned that the Senior Analyst position was given to a much younger female, Annette Purdon (born in 1974), who had less experience with the company.

32. Plaintiff Williams is personally aware of Sprint's practice of transferring employees to "safe" positions before implementing a reduction in force:

a. During both the Spring and the Fall of 2001, Plaintiff Williams personally observed that several males under the age of 40 were transferred from various positions in her business unit to work on what was called the "Renaissance Billing Platform," a new billing system that Sprint was developing;

b. Upon information and belief, the employees who were transferred to work on "Renaissance Billing" in the Sprint of 2001 were: Brent Daniel, Jay Thompson, Shelby Brown and Josh Haddad. All were under the age of 40 at the time;

c. Upon information and belief, the employees who were transferred to work on "Renaissance Billing" in the Fall of 2001 were: Scott Rutherford, Chris Pritchard, Rich Brackenhauf, Ryan Gaik and Brett Talcott. All were under the age of 40 at the time.

33. None of these employees who transferred to work on Renaissance Billing in 2001 were included in the reduction in force of March 13, 2002.

34. In February of 2002, a new "subjective" performance rating system was introduced and Plaintiff Williams was improperly given a low rating.

35. Specifically, in February of 2002, Plaintiff Williams was given a rating of "4" on her 2001 LINK, and a "shadow rating" of "S" despite being told in her first interim and second interim reviews that her overall work performance met all expectations.

36. Sprint promoted two males under the age of 30 to the same position and job grade

that plaintiff held during the two-week period immediately before Plaintiff Williams was terminated.

37. On or about March 1, 2002, two younger employees – Pat Paden (born in 1974) and Darin Collins (born in 1975) – were promoted to Analyst positions (Grade 73) in the Tables Department.

38. On March 13, 2002, Plaintiff Williams was notified (along with another co-worker, Dawne Adams, also over the age of 40 and also a grade 73) that she was to be terminated in a "reduction in force." Ms. Adams and Plaintiff Williams were the oldest Analysts in their department, had the longest tenure in their department, and were the only two Analysts terminated from their immediate work group on March 13, 2002.

39. Pat Paden and Darin Collins, who had been promoted to the same position and same pay grade that plaintiff held just two weeks earlier, were not terminated on March 13, 2002.

40. Defendants discriminated against Plaintiff Williams on the basis of her age with respect to the terms and conditions of her employment, by denying her promotional opportunities, by terminating her employment on March 13, 2002, and by refusing to re-hire and/or re-call Plaintiff Willliams for employment.

41. Upon Plaintiff Williams' termination, her position was filled by and/or her former job duties were assumed by one or more younger employees.

42. Plaintiff Williams was treated less favorably than similarly situated younger employees in the layoff.

43. Plaintiff Williams' age was a motivating and/or determining factor in the decision to terminate her employment. Defendants' stated reasons for Plaintiff Williams' termination

were a pretext for discrimination on the basis of her age.

44. Plaintiff Williams has suffered from Defendants' conduct which constitutes age discriminatory disparate treatment and from Defendants' conduct which had a disparate impact based on age.

45. Based upon Defendants' discrimination against her, Plaintiff Williams filed a timely Charge of age discrimination with the Equal Employment Opportunity Commission (EEOC) on or about May 21, 2002.

46. Plaintiff Williams has received a Notice of Right to Sue from the EEOC.

47. Plaintiff Williams has fulfilled all conditions precedent to the filing of this action.

COUNT I – AGE DISCRIMINATION

48. Plaintiff and Opt-Ins hereby incorporate by reference each and every allegation and averment above as though fully set forth in Count I herein.

49. Defendants discriminated against plaintiffs and opt-ins on the basis of age, in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 623.

50. Defendant, by and through its officers, employees and agents, engaged in a continuing pattern and practice of discrimination against and/or disparate treatment of plaintiffs and opt-ins based upon age, in defendant's denials of plaintiffs'/opt-ins' opportunities for promotions, in defendant's terminations of plaintiffs/opt-ins, and in defendant's denial of plaintiffs'/opt-ins' equal opportunities for rehire post-RIF.

51. In addition to and or as part of its pattern and practice of age discrimination, defendant engaged in conduct relating to the "alpha" forced ranking performance review system which had a disparate impact on plaintiffs/opt-ins, and others in the protected age classification under the Age Discrimination in Employment Act.

52. As a direct and proximate result of the continuing pattern and practice of discrimination directed toward plaintiffs/opt-ins, of the disparate treatment of plaintiffs/opt-ins, and/or of defendant's conduct which has had a disparate impact on plaintiffs and opt-ins based on age, plaintiffs have each suffered actual damages in the form of lost wages, lost fringe benefits, loss of earning capacity, and in other respects, all in amounts yet to be determined.

53. Defendant's actions were willful, entitling plaintiffs and opt-ins to liquidated damages in an amount equal to the actual damages referred to in the preceding paragraph.

54. Plaintiffs/Opt-Ins have already incurred and will in the future incur substantial attorneys fees and expenses in prosecuting their claims of discrimination to which fees and expenses plaintiffs are entitled pursuant to 29 U.S.C. §§ 626(b) and 216(b).

WHEREFORE, plaintiffs and all Opt-Ins respectfully pray judgment in each's favor, and in favor of all those similarly situated, against defendants Sprint/United Management Company and Sprint Corporation in the form of the Order of this Court: (1) permanently restraining defendants from ever again discriminating against plaintiffs or any other individual on the basis of that individual's age; (2) reinstating plaintiffs to their respective positions with any promotions and pay increases each would have received in the interim; (3) awarding plaintiffs back pay in an amount yet to be determined; (4) in the alternative to reinstatement, awarding plaintiffs front pay in an amount yet to be determined; (5) awarding plaintiffs lost fringe benefits in an amount yet to be determined; (6) awarding plaintiffs liquidated damages in an amount equal to their actual damages; (7) awarding plaintiffs their costs and expenses, including attorneys and expert witness fees, incurred in prosecuting their claims of discrimination; (8) awarding plaintiffs damages to offset unfavorable tax consequences of any award, including attorneys fees; and (9) awarding such other and further relief as the Court deems just and proper.

COUNT II – ADEA COLLECTIVE ACTION

55. Plaintiffs and all Opt-Ins hereby incorporate by reference each and every allegation and averment above as though fully set forth in Count II herein.

56. Cumulatively or in the alternative, defendants engaged in a pattern and practice of discrimination against plaintiffs and others similarly situated in the respects specified in Count I in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 23, et seq.

57. Plaintiffs' and Opt-In Plaintiffs' Charges of discrimination filed with the EEOC asserted claims on behalf of themselves and others similarly situated.

58. As a direct and proximate result of the continuing pattern and practice of discrimination and/or disparate treatment of plaintiffs and others similarly situated, and of defendant's conduct which has had a disparate impact, plaintiffs and others similarly situated have suffered actual damages in the form of lost wages, lost fringe benefits, loss of earning capacity, loss of career opportunity, costs of seeking alternate income, expenses incurred in obtaining alternate income, and in other respects, all in an amount yet to be determined.

59. Defendants' actions were willful, wanton, malicious and in reckless disregard of plaintiffs' rights and those of others similarly situated.

60. Plaintiffs and Opt-Ins have already incurred and will in the future incur substantial attorneys fees and expenses in prosecuting their claims of discrimination to which fees and expenses plaintiffs are entitled pursuant to 29 U.S.C. §§ 626(b) and 216(b).

WHEREFORE, plaintiffs and all Opt-Ins respectfully pray judgment in each's favor and in favor of all those similarly situated, against defendants Sprint/United Management Company and Sprint Corporation in the form of the Order of this Court: (1) permanently restraining defendants from ever again discriminating against plaintiffs or any other individual on the basis

of that individual's age; (2) reinstating plaintiffs to their respective positions with any promotions and pay increases each would have received in the interim; (3) awarding plaintiffs back pay in an amount yet to be determined; (4) in the alternative to reinstatement, awarding plaintiffs front pay in an amount yet to be determined; (5) awarding plaintiffs lost fringe benefits in an amount yet to be determined; (6) awarding plaintiffs liquidated damages in an amount equal to their actual damages; (7) awarding plaintiffs their costs and expenses, including attorneys and expert witness fees, incurred in prosecuting their claims of discrimination; (8) awarding plaintiffs damages to offset unfavorable tax consequences of any award, including attorneys fees; and (9) awarding such other and further relief as the Court deems just and proper.

COUNT III – ADA RETALIATION

61. Plaintiffs hereby incorporate by reference each and every allegation and averment above as though fully set forth in Count III herein.

62. Defendants retaliated against Plaintiff Williams, in violation of 42 U.S.C. § 12203, after she "participated . . . in an investigation" by being interviewed by counsel for defendants in connection with a disability discrimination lawsuit filed by a former co-worker, by (a) denying Williams promotions; (b) giving Williams an unfavorable performance appraisal; (c) targeting Williams for termination and/or layoff; and (d) terminating Williams on March 13, 2002.

63. Defendants' actions were intended to coerce, intimidate, threaten or interfere with the exercise or enjoyment by Williams of rights granted her and/or protected by the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq., in violation fo the provisions of 42 U.S.C. § 12203.

64. As a direct and proximate result of the continuing pattern and practice of

retaliation directed toward her or disparate treatment of her and of defendants' termination of her, Plaintiff Williams has suffered actual damages in the form of lost wages, lost fringe benefits, loss of earning capacity, loss of career opportunity, costs of seeking alternate income, expenses incurred in obtaining alternate income, pain and suffering, future medical expense, mental anguish, emotional distress, loss of enjoyment of life, and in other respects, all in an amount yet to be determined but not less than Seventy-Five Thousand Dollard ($75,000.00).

65. Defendants' actions were willful, wanton, malicious and in reckless disregard of Plaintiff Williams' rights; were motivated by evil motive or reckless indifference to the harm that they might inflict upon Williams or amounted to gross negligence.

66. Plaintiff Williams has already incurred and will incur in the future substantial attorneys fees and expenses incurred in prosecuting this action, which fees and expenses are recoverable by virtue of 42 U.S.C. §§ 12117(a) and 12205, and 42 U.S.C. § 2000e-5(k).

WHEREFORE, plaintiffs respectfully pray judgment in each's favor and in favor of all those similarly situated, against defendants Sprint/United Management Company and Sprint Corporation in the form of the Order of this Court: (1) permanently restraining defendants from ever again discriminating against plaintiff or any other individual, for engaging in protected activity under the Americans with Disabilities Act; (2) reinstating plaintiff to her former position (3) awarding plaintiff back pay in an amount yet to be determined, but not less than seventy-Five Thousand Dollars ($75,000.00); (4) in the alternative to reinstatement, awarding plaintiff front pay in an amount yet to be determined; (5) awarding plaintiff lost fringe benefits in an amount yet to be determined; (6) awarding plaintiff compensation for physical injury, pain and suffering, future medical, mental anguish, emotional distress, loss of enjoyment of life, and other categories of actual damage, each in an amount yet to be determined but not less than seventy-Five

Thousand Dollars ($75,000.00); (7) awarding plaintiff punitive damages in the amount of $1,000,000.00 (One Million Dollars) or such other amount as a jury may deem appropriate;(8) awarding plaintiff damages to offset unfavorable tax consequences of any award, including attorneys fees; and (10) awarding such other and further relief as the Court deems just and proper.

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I hereby certify that the foregoing was filed electronically and notice of such filing was made electronically to defense counsel pursuant to the ECF Rules of the US District Court for the District of Kansas on November 14, 2005:

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