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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
AT SAN JOSE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

MEMSCAP, Inc.

Defendant.

CIVIL ACTION NO.

COMPLAINT

JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under the Age Discrimination in Employment Act ("ADEA") to correct unlawful employment practices on the basis of age and to provide appropriate relief to Robert Miller and Michael Tavares, two individuals adversely affected by such practices. The Equal Employment Opportunity Commission alleges that MEMSCAP, Inc. ("MEMSCAP" or the "Employer") unlawfully discriminated against Robert Miller and Michael Tavares, in that MEMSCAP terminated each individual based on age.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 7 (b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §626 (b) ("ADEA"), which

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incorporates by reference Sections 16 (c) and 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§216 (c) and 217.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Northern District of California at San Jose.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of the ADEA and is expressly authorized to bring this action by Section 7 (b) of the ADEA, 29 U.S.C. §626 (b), as amended by Section 2 of Reorganizing Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

4. At all relevant times, Defendant, MEMSCAP, has continuously been doing business in the State of California and the City of San Jose, and has continuously had at least 15 employees. Defendant's North American headquarters is in San Jose, California.

5. At all relevant times, defendant Employer has been continuously engaged in an industry affecting commerce within the meaning of Section 11 (b), (g), and (h) of the ADEA, 29 U.S.C. §§630 (b), (g), and (h).

CONCILIATION

6. Prior to institution of this lawsuit, the Commission's representatives attempted to eliminate the unlawful employment practices alleged below and to effect voluntary compliance with the ADEA through informal methods of conciliation, conference, and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C. §626(b).

STATEMENT OF CLAIMS

8. More than thirty days prior to the institution of this lawsuit, Robert Miller and Michael Tavares each filed a charge with the Commission alleging violations of Section 7(b) of the ADEA by defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

9. Since at least April 15, 2002, defendant Employer has engaged in unlawful employment practices at its San Jose, California facilities, in violation of Section 623 (a) of the ADEA, 29 U.S.C. §§ 623 (a). The defendant Employer discharged each individual from employment with the company based on the individual's age.

10. The effect of the practices complained of in paragraph 8 above has been to deprive Robert Miller and Michael Tavares of equal employment opportunities and otherwise adversely affect each individual's status as an employee because of his age.

11. The unlawful employment practices complained of in paragraph 9 above were and are willful within the meaning of Section 7 (b) of the ADEA, 29 U.S.C. § 626 (b).

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining defendant Employer, its officers, agents, successors, assigns, and all persons in active concert or participation with it, from engaging in any employment practice that discriminates on the basis of age against individuals 40 years of age and older.

B. Order defendant Employer to institute and carry out policies, practices, and programs that provide equal employment opportunities for qualified individuals 40 years of age and older, and which eradicate the effects of its past and present unlawful employment practices.

C. Grant a judgment requiring defendant to pay appropriate back wages in an amount to be determined at trial, an equal sum as liquidated damages, prejudgment interest and front pay to Robert Miller and Michael Tavares.

D. Order defendant to make whole Robert Miller and Michael Tavares, the individuals adversely affected by the unlawful practices described above, by providing the affirmative relief necessary to eradicate the effects of its unlawful practices, including but not limited to reinstatement

E. Grant such further relief as the Court deems necessary and proper in the public interest.

E. Award the Commission its costs in this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

DATED this _____ day of _____, 2003.

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