

THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY)	<u>ECF</u>
COMMISSION,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	
)	<u>COMPLAINT</u>
ADESA New York, Inc.)	
(d/b/a ADESA Buffalo),)	
)	JURY TRIAL DEMAND
Defendant.)	
_____)	

NATURE OF THE ACTION

This is an action under the Age Discrimination in Employment Act to correct unlawful employment practices on the basis of age and to provide appropriate relief to Susan Metz, Sharon Noble, Terry Janicz and Cheryl McConnell (collectively referred to as Claimants unless otherwise indicated). As alleged with greater specificity below, the Equal Employment Opportunity Commission alleges that Defendant ADESA New York, Inc. (d/b/a ADESA Buffalo) discriminated against the Claimants because of their ages. In February 2003, Defendant terminated the Claimants from their employment because of their ages, over 40.

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) (the "ADEA"), which incorporates by reference Section 16(c) of the Fair Labor Standards Act of 1938 (the

“FLSA”), as amended, 29 U.S.C. § 216(c).

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Western District of New York.

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 Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

4. At all relevant times, Defendant has continuously been doing business in the State of New York and Erie County, and has continuously had at least 20 employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 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

7. Since at least February 2003, Defendant has engaged in unlawful employment practices in violation of the ADEA, 29 U.S.C. § 623, when it laid off Claimants Metz, Noble, Janicz and McConnell from their employment because of their ages, 49, 53, 55, and 57,

respectively. Defendant denied the Claimants the opportunity for re-employment or transfer to new positions which it provided to employees under age 40 who were affected by Defendant's restructuring at the same time.

8. The effect of the practices complained of in paragraph 7 has been to deprive the Claimants equal employment opportunities and otherwise adversely affect their status as employees.

9. The unlawful employment practices complained of in paragraph 7 above were 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, their officers, successors, assigns and all persons in active concert or participation with them, from discriminating against employees age 40 and over, on the basis of age and/or engaging in protected activity under the ADEA, and from any other employment practice which discriminates on the basis of age against individuals 40 years of age and older.

B. Order Defendant to institute and carry out policies, practices and programs which provide equal employment opportunities for 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, and an equal sum as liquidated damages, or prejudgment interest in lieu thereof, to the Claimants as a result of the acts complained of above.

D. Order Defendant to make whole all individuals adversely affected by the unlawful

practices described above, by providing the affirmative relief necessary to eradicate the effects of their unlawful practices, including but not limited to the reinstatement of the Claimants.

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

F. Award the Commission its costs of this action.

JURY TRIAL DEMAND

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

Dated: New York, New York
September 29, 2005

Respectf

ully submitted,

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EQUAL

EMPLOYMENT OPPORTUNITY
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