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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD CLAUSNITZER, GABRIEL	CASE NO.
) CONTRERAS, FRANK MARTINEZ	
) and all those similarly	COMPLAINT
) situated	
)	DEMAND FOR JURY TRIAL
)	
Plaintiffs,	[ADEA COLLECTIVE ACTION]
)	
)	
vs.	
)	
)	
)	
FEDERAL EXPRESS CORPORATION	
)	
and Does 1 through 10,	
)	
inclusive	
)	
)	
)	
Defendants.	
)	

COMPLAINT

1. This suit is brought to enforce and secure rights of plaintiffs and other similarly situated older employees under the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq., and to eliminate and correct the nationwide pattern and practice of the Defendant Federal Express Corporation of discriminating based upon age against its couriers who are over the age of 40 and who have ten or more years of service.

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JURISDICTION AND VENUE

1 2. This Court has jurisdiction over this case under 29
2 U.S.C. § 626(c) and 28 U.S.C. § 1332, § 1337. Plaintiffs
3 Contreras and Martinez are employed by Federal Express
4 Corporation at its station in Fullerton, California. Venue in
5 this District is appropriate under the ADEA, 29 U.S.C. § 626(c).
6

PARTIES

7 3. The Defendant Federal Express Corporation ("FedEx" or
8 "Defendant") is a corporation engaged in the transportation of
9 packages by air and by ground throughout the United States. The
10 corporation's headquarters are in Memphis, Tennessee. FedEx is
11 an employer as defined by the ADEA.
12

13 4. Plaintiffs Clausnizter, Contreras and Martinez have each
14 been employed by the Defendant as a courier for more than ten
15 years. Each of them was born before December 31, 1954. Each of
16 them is an employee as defined by the ADEA.
17

STATEMENT OF FACTS

18 5. FedEx provides health care coverage and a pension plan
19 for its couriers and other fringe benefits. Such benefits cost
20 FedEx more than 40% of the gross pay of its couriers.
21

22 6. By 1994, each of the plaintiffs had become efficient
23 full time couriers who met or exceeded the guidelines of FedEx
24 for good performance. Each of them received excellent or good
25 performance evaluations from the time he was hired as a courier
26 until at least 1994.
27

28 7. In November 1994, FedEx adopted a compensation system
called "Best Practices Pays" ("BPP"). Close to that time, FedEx
adopted new standards for assessing the performance of couriers
as its "Minimum Acceptable Performance Standards" ("MAPS").

1 8. Upon information and belief, BPP and MAPS were designed
2 to force or encourage older, experienced couriers to quit or
3 otherwise leave their employment with FedEx, and to do so before
4 they became 55 years of age.

5 9. Under the policies adopted in 1994 and thereafter, FedEx
6 gave managers and other supervisors lists of older couriers who
7 were targets for increased supervision, discipline, harassment
8 and termination from employment. The practice of targeting older
9 couriers in that manner has continued to this date and is
10 believed to be continuing. This targeting was and is based upon
11 age. FedEx has not engaged in similar targeting of younger
12 couriers.

13 10. Under the policies adopted in 1994, FedEx gave older
14 couriers who were injured on the job or otherwise required
15 medical absence intense scrutiny and harassment, and found
16 reasons to discharge them or induce them to leave. FedEx has not
17 treated younger couriers who have been injured or who have
18 otherwise required medical absences with such scrutiny and
19 harassment; nor have younger couriers been discharged or induced
20 to leave their employment with FedEx.

21 11. FedEx has interpreted and administered BPP and MAPS in
22 a manner that harmed those couriers who were over the age of 40.

23 12. Although BPP and MAPS do not mention age, those two
24 programs have become vehicles by which FedEx causes its older
25 couriers to quit or be discharged from its employment. Those
26 procedures and others are administered by FedEx in a manner that
27 rarely if ever causes the termination of younger couriers.

28 13. Under the policies and practices described above, FedEx
has shown preference to younger, less experienced couriers in

1 starting times, assignments of production goals, overtime
2 assignments and route assignments, discipline, performance
3 evaluations and other terms and conditions as compared to older
4 couriers, including plaintiffs.

5 14. Employment practices that discriminate against older
6 couriers and favor younger couriers are the prevailing pattern
7 and practice of FedEx in the United States. Upon information and
8 belief, FedEx has continued to follow employment practices that
9 favor younger couriers and harm older couriers.

10 CLAIM ONE

11 For Discrimination in Violation of the ADEA

12 On Behalf of All Plaintiffs and the Class Against Defendant

13 15. Plaintiffs reassert and reallege paragraphs 1 through
14 14, inclusive, as if fully set forth and incorporate said
15 paragraphs herein by reference.

16 16. The employment practices of FedEx described above in
17 paragraphs 6 through 14 harm older couriers and favor younger
18 couriers. The practices so described and are not based upon a
19 reasonable factor other than age.

20 17. Since at least 1995, FedEx has been charged with age
21 discriminatory practices by couriers numerous times.

22 18. Plaintiff Clausnitzer and five other couriers filed
23 charges in 1997 against Defendant FedEx in 1997, alleging
24 purposeful age discrimination and age discriminatory practices.

25 19. On October 26, 1999, Plaintiff Clausnitzer and other
26 couriers filed a Complaint *pro se* in federal court which alleged
27 a pattern or practice of age discrimination throughout the United
28 States. On January 27, 2000 the plaintiffs in that suit filed a
motion to certify a nationwide class action. That suit was

terminated on procedural grounds on or about March 28, 2002.

1 Their motion for class certification was rendered moot.

2 20. In early December 2001, Patricia A. Kennedy filed with
3 the Equal Employment Opportunity Commission her written answers
4 to a Questionnaire and a five page Affidavit in which she alleged
5 a pattern of discrimination against her and other older couriers.

6 Those papers constitute a charge under the ADEA as defined in
7 the valid regulations of the Equal Employment Opportunity
8 Commission. 29 C.F.R. § 1626.6 and § 1626.8.

9 21. Fourteen plaintiffs, including Patricia A. Kennedy, and
10 other plaintiffs who had filed timely charges with the Equal
11 Employment Opportunity Commission filed suit against Federal
12 Express on or about April 29 or 30, 2002, alleging that Federal
13 Express has followed a pattern and practice of age
14 discrimination against couriers over the age of 40. *Holowecki et*
15 *al v. Federal Express Corporation*, S.D.N.Y. No. 02 CV 3355. That
16 case is pending before the Second Circuit as 04-3376-cv.

17 22. Defendant FedEx has been on notice of allegations and
18 allegations of wide spread practices of discrimination against
19 its older couriers and that it continues to follow the same age
20 discriminatory policies and practices that it adopted and
21 followed in 1994 and 1995.

22 23. Plaintiff Clausnitzer filed a charge alleging age
23 discrimination with the EEOC in 2003. On or about April 1, 2005,
24 plaintiff Clausnitzer filed an amended charge alleging age
25 discrimination on behalf of a class of couriers over the age of
26 40. The EEOC issued a right to sue on the amended charge that
27 was mailed on October 3, 2005. Upon information and belief,
28 plaintiffs assert that similar charges have been filed by other

standards or be terminated. On information and belief, Mr. Saiz was instructed to eradicate the Clearwater, Florida station of "dead wood". In January 2004, Plaintiff Clausnitzer was told that he was one of the "targets".

30. In January and/or February 2004, plaintiff Clausnitzer's route goals were change by defendant without notice or reason. While other couriers' routes were reorganized and condensed, plaintiff Clausnitzer's routes was given significant increases such as the addition of bulk stops, early pickups, and more diverse delivery situations.

31. In April 2005, plaintiff Clausnitzer was targeted and disciplined for productivity issues under MAPS. Unlike his other younger co-workers, Defendant changed the basis upon which his performance is measured so that his performance appears to be below the MAPS "goals". Based on this alleged sub-standard performance, plaintiff Clausnitzer is closer to termination than his younger co-workers.

32. Defendant took such adverse actions against plaintiff Clausnitzer knowing that plaintiff had complained of age discrimination before both the EEOC and in federal court.

33. As a result of Defendant's retaliation, plaintiff Clausnitzer has suffered harm, including emotional and mental distress.

PRAYER FOR RELIEF

Plaintiffs pray for orders requiring the defendant Federal Express to notify, in a form to be approved by the Court, all current couriers over the age of 40, and former couriers who had reached the age of 40, before their employment with Federal Express was terminated, of the allegations in this law suit and

the right to intervene in this suit; and

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2 Plaintiffs pray for an order preliminarily and permanently
3 enjoining defendant Federal Express and its officers, agents,
4 employees, successors and all persons from engaging in employment
5 practices that discriminate against older couriers on grounds of
6 age, and from following neutral employment practices that have a
7 discriminatory impact against older couriers, unless the employer
8 can show that such practices are based upon a "reasonable factor
9 other than age" within the meaning of the ADEA. Such an order
10 should enjoin the Defendant Federal Express from:

11 1) treating older couriers less favorably than younger
12 couriers in the allocation of routes, start times, overtime
13 opportunities, and other terms and conditions of employment;

14 2) terminating or disciplining older couriers who are absent
15 from work because of injuries or other medical problems while
16 they are recovering from same, in the absence of solid medical
17 evidence that they are disabled from performing the duties of a
18 courier;

19 3) treating older couriers less favorably than younger
20 couriers in discipline and other terms and conditions of
21 employment;

22 / / / /

23 4) following employment practices such as BPP and MAPS and
24 other practices that have a discriminatory impact against older
25 couriers, unless this Court determines that any such practice is
26 based upon a reasonable factor other than age;

27 5) failing or refusing to reinstate older couriers whose
28 employment was terminated by Federal Express because of their age
or because of unlawful practices by Federal Express which

1 resulted in their separation from employment by Federal Express
2 not based upon a factor other than age;

3 6) retaliating against any couriers who have opposed any
4 discriminatory policies or practices, or who have made a charge,
5 testified, assisted, or participated in any manner in an
6 investigation, proceeding, or litigation.

7 Plaintiffs further pray for an award of damages to them and
8 plaintiffs who opt into this suit for:

9 a) loss of income and the value of fringe benefits as
10 determined by the jury;

11 b) an award of liquidated damages as determined by the jury;

12 c) pre-judgment interest in an amount to be determined;

13 d) costs of litigation, including expenses and attorneys'
14 fees and expert witness fees; and

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e) such other relief as may be just.

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Dated: December 23, 2005

Respectfully submitted,

David L. Rose
Terri N. Marcus
Attorneys for PLAINTIFFS

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial as provided by Rule
38(a) of the Federal Rules of Civil Procedure.

DATED: December 23, 2005

ROSE & ROSE, P.C.

By:

Terri N. Marcus
Attorneys for PLAINTIFFS