

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

MEDEGEN MEDICAL PRODUCTS, LLC,
A Delaware Limited Liability Company operating in Colorado,

Defendant.

COMPLAINT AND JURY TRIAL DEMAND

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 a class of individuals over age 40, whom Defendant laid off because of their age. The Equal Employment Opportunity Commission (“EEOC” or “Commission”) alleges that Defendant, Medegen Medical Products, LLC (“Medegen”), terminated employees who are at least 40 years of age and older because of their age, including Robert Marshall (age 56), Ronald Bracey (age 60), Irene Price (age 60), Sherrie Neil (age 62), Cathy Schnabel (age 53), Robert Esselborn (age 63), Don Gibson (age 49), and Greg Woznicki (age 53) (hereinafter referred to collectively as the “terminated employees”). In addition, Defendant constructively discharged Ms. Schnabel by reducing her work hours.

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) and 17 of the Fair Labor Standards Act of 1938 (the “FLSA”), as amended, 29 U.S.C. §§216(c) and 217.

2. The employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the United States District Court for the District of Colorado.

3. More than thirty days prior to the institution of this lawsuit, six former employees of Medegen filed charges of discrimination with the EEOC alleging violations of the ADEA by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

PARTIES

4. 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.

5. At all relevant times, Defendant Medegen has continuously been a domestic corporation doing business in the State of Colorado and the City of Northglenn, and has continuously had at least 20 employees.

6. At all relevant times, Defendant Medegen 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

7. 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. Since at least January of 2003, Defendant engaged in unlawful employment practices in violation of Section 623(a)(1) of the ADEA, 29 U.S.C. § 623 (a)(1) by terminating older employees because of their age, and treating substantially younger employees more favorably.

9. In early 2003, Medegen devised and instituted a reduction in force ("RIF"). During this RIF, all eight terminated employees were terminated. Many of the workers who were retained at Medegen had less time and/or experience with the company than the terminated employees.

10. During the RIF, older workers were targeted for termination. Although some of the older employees were told that their jobs were being eliminated, younger employees assumed their job duties or were hired for the "eliminated" positions after the eight "terminated individuals" were terminated.

11. Moreover, shortly after the layoffs, Medegen advertised job openings in the newspaper for jobs that some of the terminated employees could have performed. For example, subsequent to the RIF, Medegen advertised for an equipment/process technician--the position Bracey held until he was told it was being eliminated. The "terminated employees" were not

informed about open positions, nor were they given the opportunity to transfer to or apply for those positions that had been advertised.

12. Upon information and belief, Jim Bennett (“Bennett”), the Colorado Plant Manager, who is believed to be significantly younger than the workers subject to the RIF, made the final decisions regarding who would be terminated. He did so with the knowledge and acquiescence of the company and with the intent and purpose of discriminating against older workers.

13. Additionally, as a sign of the premeditated thought process indicating intentional discrimination, just prior to the layoffs, Bennett had requested retirement information be distributed to all Medegen employees over the age of sixty (60).

14. The effect of the practices complained of in paragraphs 8-13 above has been to deprive employees 40 years of age or older, including Robert Marshall, Ronald Bracey, Irene Price, Sherrie Neil, Cathy Schnabel, Robert Esselborn, Don Gibson, and Greg Woznicki, of equal employment opportunities and otherwise adversely affect their status as employees because of their age.

15. The unlawful employment practices complained of in paragraphs 8-13 above 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 Medegen, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in discipline, retaliation, and any other employment practice which discriminates on the basis of age against individuals 40 years of age and older.

B. Order Defendant Medegen 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 Medegen to pay appropriate back wages in an amount to be determined at trial, an equal sum as liquidated damages, and prejudgment interest to individuals whose wages are being unlawfully withheld as a result of the acts complained of above.

D. Order Medegen to make whole a class of protected age group employees who were 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 rightful-place hiring of the class of protected age group employees and/or front pay.

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 this 26th day of September, 2006.

Respectfully submitted,

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