

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James Peterson, David Olson,
Paul Calcagno, Rebecca Chwialkowski,
Gary Egbert, Narendra Garg,
Luana Goodnough, William Grunwald,
David Hurd, Rick Kehrwald, David Legut,
Karen Lieberg, Charles Lucas,
Daniel Michael McDaniel,
Theresa Raskob, Thomas Schaff,
Jane Thomes, Keith Turnbull, Susan Walseth,
Lee Walter, and Ronald Wrase,
for and on behalf of themselves
and other persons similarly situated,

CIVIL 07-2502 MJD/AJB

Plaintiffs.

COLLECTIVE ACTION COMPLAINT

JURY TRIAL DEMANDED

v.

Seagate US LLC, Seagate Technology,
Seagate, Seagate Technology, Inc.,
Seagate 4 LLC, Seagate Technology LLC,
Seagate Technology (US) Holdings, Inc.,
Seagate Technology, US, LLC,
Seagate Software, Inc.,
Seagate Holdings, LLC

Defendants.

Plaintiffs named above, for and on behalf of themselves and other persons similarly situated / all Opt-In Plaintiffs (collectively referred to hereinafter as "Plaintiffs"), for their complaint against Defendants (collectively "Seagate"), state and allege as follows:

SCANNED

MAY 25 2007

U.S. DISTRICT COURT MPLS

Jurisdiction and Venue

1. This is collective and individual age discrimination case. Seagate engaged in disparate treatment of older employees with regard to the terms and conditions of employment and termination. Seagate engaged in a pattern or practice of age discrimination in connection with terminations, selection process, opportunities for open positions and hiring.
2. Plaintiffs seek relief under the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621 *et. seq.* This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331.
3. Plaintiffs seek declaratory relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, relating to the enforceability of a purported release and waiver signed by many of the Plaintiffs. The EEOC determined that “the evidence obtained during the course of the investigation establishes reasonable cause to believe that the Charging Part(ies) [have] been discriminated against based on age, and that a class of employees has been discriminated against based on age,” and “the evidence obtained establishes reasonable cause to believe that [Seagate’s] Special Separation Agreement and Release violates EEO statutes because it requires an employee to waive his/her right to file an EEOC Charge of Discrimination.”
4. This action is brought under the ADEA, 29 U.S.C. § 216(b) on behalf of the Plaintiffs named above and all persons similarly situated who choose to opt in under procedures applicable to age discrimination claims. Declaratory relief is sought under 28 U.S.C. § 2201.

5. Venue of this action in the United States District Court for the District of Minnesota is proper pursuant to 28 U.S.C. § 1391(b) because the Plaintiffs were employed and terminated here, and a substantial part of the events giving rise to these claims occurred here.

6. All conditions precedent to the filing of this lawsuit have been met. Plaintiffs Olson and Peterson timely filed charges of age discrimination with the Equal Employment Opportunity Commission (“EEOC”) and cross-filed with the Minnesota Department of Human Rights (“MDHR”). Seagate, the EEOC and the MDHR were placed on notice that the claims were filed on behalf of all persons similarly situated, and that collective and class litigation was contemplated. Other terminated employees over age 40 that did not file charges within 300 days are “piggybacking” on the charges of Plaintiff’s Olson and Peterson. The EEOC treated Plaintiff’s Olson and Peterson’s charges as class/collective charges. The EEOC issued Right to Sue letters on February 27, 2007.

Parties

7. Seagate employed each named Plaintiff in its Minnesota facilities for many years and in the job capacity noted. All Plaintiffs were over the age of 40 at the time Seagate terminated their employment:

- James Peterson, resident of Eden Prairie, MN, Sr. Development Engineer when fired;
- David Olson, resident of St. Paul, MN, Staff Development Engineer when fired;
- Paul Calcagno, now a resident Palm Coast, FL, Engineering Director when terminated;

- Rebecca Chwialkowski, resident of Bloomington, MN, Executive Assistant, Engineering when fired;
- Gary Egbert, resident of Apple Valley, MN, Sr. Director of Engineering when fired;
- Narendra Garg, resident of Minnetonka, MN, Sr. Staff Engineer when fired;
- Luana Goodnough, Prior Lake, MN, Sr. Administrative Assistant, Engineering when fired;
- William Grunwald, resident of Apple Valley, MN, Sr. Advisory Development Engineer when fired;
- David Hurd, resident of Edina, MN, Sr. Advisory Development Engineer when fired;
- Rick Kehrwald, resident of Bloomington, MN, Sr. Engineer when fired;
- David Legut, resident of Bloomington, MN, Engineering Specialist when fired;
- Karen Lieberg, resident of Hutchinson, MN, Engineering Support Technician when fired;
- Charles Lucas, resident of Burnsville, MN, Sr. Engineering Technician when fired;
- Daniel Michael McDaniel, resident of St. Paul, MN, Maintenance Technician, Engineering when fired;
- Theresa Raskob, resident of Chaska, MN, Sr. Department Administrative Specialist, Engineering when fired;
- Thomas Schaff, resident of Fridley, MN, Sr. Engineer when fired;
- Jane Thomes, resident of Burnsville, MN, Shipping/Receiving Clerk, Engineering when fired;

- Keith Turnbull, resident of Richfield, MN, Engineer when fired;
- Susan Walseth, resident of Lino Lakes, MN, Engineering Specialist when fired;
- Lee Walter, resident of Plymouth, MN, Sr. Development Engineer when fired;
- Ronald Wrase, resident of Savage, MN, Business Staff Project Manager, Engineering when fired.

8. Seagate is a foreign corporation doing business in Minnesota. Seagate has Minnesota facilities in Bloomington and Shakopee. For the purposes of this Complaint, the term “Seagate” is intended to cover all legal entities that employed one or more of the Plaintiffs at the time of their termination, including the entities above-named and any and all divisions of the above-named entities.

9. Seagate is an employer within the meaning of the ADEA.

10. Each Plaintiff named in the caption of this case has consented to become a party Plaintiff in this action and a class representative as appropriate.

Statement of Claims

11. Each Plaintiff was terminated pursuant to the same corporate pattern or practice and is similarly situated, including but not limited to: being over age 40, treated adversely, terminated in mass terminations in 2004, geographic location, similar untruthful reasons given for termination, qualified for the position or positions he or she held, and able to perform his or her duties in a satisfactory manner.

12. Plaintiffs are members of a protected class because they were 40 years of age or older at the time Seagate terminated their employment.

13. Plaintiffs were qualified by training and experience to perform, and were satisfactorily performing, the functions of their positions.

14. Despite Plaintiffs' qualifications, Seagate subjected Plaintiffs to adverse treatment in the terms, conditions and privileges of their employment and termination due to their age. Specific instances of adverse treatment, pattern or practice, and policy infected by age discrimination includes, but is not limited to, the following:

- a. Terminating the Plaintiffs' employment;
- b. Transferring older workers to jobs or departments which were planned to be phased out or eliminated;
- c. Consciously deciding not to comply with the Older Workers Benefit Protection Act;
- d. Taking responsibilities away from older employees and giving them to younger, less qualified employees;
- e. Claiming to "eliminate" jobs that were not eliminated;
- f. Instructing older employees to train in their younger replacements;
- g. Telling older employees that they lacked skills that they in fact had;
- h. Hiring younger employees shortly before and after firing the Plaintiffs;
- i. Failing to transfer older employees into open positions;
- j. Terminating older employees who would not agree to retire;
- k. Retaining younger employees with worse performance records than older employees;
- l. Responding (a Seagate executive) to a question about criteria used for termination decisions with: "If they are older they do not need to be around here any longer.";

- m. Failing to hire, to interview and at times to even acknowledge the applications of qualified, terminated older Plaintiffs for open positions;
- n. Asking (Seagate management) older employees “why don’t you retire?” ;
- o. Using systemic, company-wide criteria and/or rankings for terminations that were subjective and that evidenced ageism;
- p. Excluding recently hired younger employees from the mass firings;
- q. Pressuring older employees to choose between retiring (Special Incentive Retirement Program) or firing;
- r. Transferring younger employees to “safe” positions before and during the terminations; and
- s. Indicating a preference for a younger workforce by using such terms as, “new blood” and “new degrees”.

15. By the time Seagate concluded its firings, well over half of the employees who lost their jobs were over the age of 40, when including those effected by the “Special Incentive Retirement Program (“SIRP”).

16. Plaintiffs and other terminated Seagate employees received a package of materials from Seagate, including, a Special Separation Agreement and General Release of claims which purported to release all claims against Seagate, including claims for age discrimination under the ADEA.

17. Seagate Human Resources employees asked the terminated employees to sign the releases immediately, without allowing them to consider it or to consult with an attorney. Seagate Human Resources employees stood at the door of the facility to collect the signed releases from the terminated employees.

18. Seagate failed to comply with the Older Workers Benefits Protection Act (OWBPA) 29 U.S. C. § 626(f). Employers are held to strict compliance of the act. Non-compliance in any respect voids releases of the ADEA claims. Seagate's violations of the Act include, but are not limited to:

- misrepresenting the number of employees selected for termination;
- omitting employees from the list of employees selected for termination;
- failing to write the materials in a manner calculated to be understood by the average individual eligible to participate; and
- ignoring other requirements of the OWBPA, including, but not limited to, failing to disclose the selection criteria / eligibility factors used to select the individuals chosen for termination.

19. Seagate also violated the OWBPA 29, U.S.C. § 626 (f)(4), by requiring individuals to waive their rights to file charges of discrimination with the EEOC. The EEOC determined that Seagate's Special Separation Agreement and Release violated EEO statutes because it required an employee to waive their rights.

20. The releases are invalid under the OWBPA, as to all signatories, because they were induced to sign the release by Seagate's misrepresentations. Plaintiffs and others terminated in the July 2004 group termination were informed that their positions were being eliminated, but in fact, many of the Plaintiffs' positions were not eliminated.

21. Plaintiffs' receipt and retention of benefits under the terms of the invalid release does not, as a matter of law, constitute a ratification of the release itself.

22. Plaintiffs seek declaratory relief from this Court. Specifically, Plaintiffs ask the Court to declare that Seagate's failure to comply with the OWBPA and the regulations

promulgated thereunder render the release invalid as against federal age discrimination claims, and that Plaintiffs may proceed in spite of signed releases. This will facilitate the swift administration of justice.

Count I

Age Discrimination (Disparate Treatment)

ADEA Collective Action

23. Plaintiffs hereby incorporate by reference each and every allegation and averment made above as though fully set forth herein.

24. This is a representative action under 29 U.S.C. § 626(b) and (c) and 29 U.S.C. § 216(b) by the above-named Plaintiffs and other similarly situated persons who opt into this action by filing appropriate notice.

25. As elsewhere more fully set forth in this Complaint, Seagate engaged in disparate treatment and an unlawful pattern or practice of age discrimination that adversely affected Plaintiffs, and each of them, and other similarly situated former Seagate employees in violation of 29 U.S.C. § 621 *et seq.*

26. The disparate treatment and unlawful pattern or practice of age discrimination by Seagate alleged herein constitutes a willful violation of the ADEA.

27. Plaintiffs' charges of discrimination filed with the EEOC asserted claims on behalf of both the Plaintiffs themselves and others similarly situated, and adequately placed Seagate on notice that a collective action would be forthcoming.

28. Plaintiffs and others similarly situated were adversely affected by the disparate treatment and pattern or practice of unlawful, willful age discrimination by Seagate as elsewhere described herein. Plaintiffs and others similarly situated suffered actual

damages in the form of lost salary and wages, bonuses, stock options, fringe benefits, retirement and insurance benefits, and other forms of compensation, as well as loss of career opportunity and advancement, costs of seeking alternate income, and in other respects, all in amounts yet to be determined, but reasonably believed to exceed \$100,000 per Plaintiff.

Count II

Age Discrimination (Disparate Impact)

ADEA Collective Action

29. Plaintiffs hereby incorporate by reference each and every allegation and averment made above as though fully set forth herein.

30. This is a representative action under 29 U.S.C. § 626 (b) and (c) and 29 U.S.C. § 216(b) by the above-named Plaintiffs and other similarly situated persons who opt into this action by filling an appropriate notice, and an individual action under the ADEA.

31. As set forth more fully above, Seagate has utilized practices, policies, and procedures that have disparately impacted former employees of Seagate, resulting in an unlawful pattern or practice of age discrimination in violation of the ADEA, 29 U.S.C. § 621 *et seq.*

32. The above-named Plaintiffs and others similarly situated were disparately impacted by Seagate's practices, policies and procedures, in violation of the ADEA.

33. Each of the above-named Plaintiffs has been disparately impacted by Seagate's practices, policies and procedures, in violation of the ADEA.

34. As a direct and proximate result of the aforesaid age discrimination by Seagate, each of the Plaintiffs has suffered damages in an amount to be determined at trial, but

reasonably believed to exceed \$100,000 per Plaintiff, including, but not limited to, lost salary, bonuses, stock options, and other forms of compensation, lost retirement benefits, insurance benefits and other employee benefits.

Count III

Age Discrimination (Disparate Treatment)

Individual Claims

35. Plaintiffs hereby incorporate by reference each and every allegation and averment made above as though fully set forth herein.

36. Seagate discriminated against each named Plaintiff herein because of his/her age in willful violation of the ADEA by engaging in disparate treatment, a pattern or practice of age discrimination, elsewhere described in this Complaint, and by terminating each Plaintiff's employment.

37. As a direct and proximate result of Seagate's unlawful and willful age discrimination against them, each individual Plaintiff has suffered damages in an amount to be determined at trial, including, but not limited to, lost salary and wages, bonuses, stock options, fringe benefits, retirement and insurance benefits, and other forms of compensation, as well as loss of career opportunity and advancement, costs of seeking alternate income, and in other respects, all in amounts yet to be determined, but reasonably believed to exceed \$100,000 per Plaintiff.

Count IV

Declaratory Judgment

28 U.S.C. § 2201

38. Plaintiffs hereby incorporate by reference each and every allegation and averment made above as though fully set forth herein.

39. All named Plaintiffs, except Olson and Peterson, signed the standard form release presented by Seagate in conjunction with the July 2004 terminations.

40. An actual controversy of a judicial nature exists between Plaintiffs and Seagate regarding whether the releases signed by Plaintiffs constitute valid waivers of Plaintiffs' age discrimination claims under the ADEA.

41. A declaratory judgment with respect to the validity of the releases would terminate any and all uncertainty and controversy with respect to the rights of signing Plaintiffs to sue Seagate for age discrimination under the ADEA.

42. Plaintiffs seek the declaratory judgment of this Court, under the authority 28 U.S.C. § 2201, that the Special Separation Agreement and General Release of claims is invalid under the OWBPA for the reasons outlined in this Complaint, including but not limited to, its requirement that the employee waive his/her right to file an EEOC Charge of Discrimination in violation of 29 C.F.R. § 1625.22 and precedent.

43. Plaintiffs further seek the order of this Court in compliance with precedent (*see, e.g., Oubre v. Entergy Operations, Inc.*, 522 U.S. 422 (1998); *Butcher v. Gerber Products Co.*, 8 F.Supp.2d 307 (S.D.N.Y. 1998) and 29 C.F.R. § 1625.23 that Plaintiffs may assert

their claims without returning cash benefits or suffering a discontinuation of other benefits during this case.

Jury Demand

44. Plaintiffs demand a trial by jury.

Prayer for Relief


WHEREFORE, Plaintiffs request that the Court enter judgment in their favor and against Seagate as follows:

1. Finding in favor of Plaintiffs and all those similarly situated that Seagate violated the ADEA;
2. Finding in favor of Plaintiffs and all those similarly situated that Seagate willfully violated the ADEA;
3. Permanently restraining Seagate from ever again discriminating against Plaintiffs or any other individuals on the basis of that individual's age;
4. Awarding each of the Plaintiffs and Opt-In Plaintiffs back pay and other appropriate compensation and benefits under the ADEA, together with interest thereon;
5. Restoring each of the Plaintiffs and Opt-In Plaintiffs to positions comparable to those from which they were terminated or, in lieu of reinstatement, awarding each Plaintiff and Opt-In Plaintiff front pay and benefits under the ADEA from the period remaining until that person's expected retirement age;
6. Awarding each Plaintiff and Opt-In Plaintiff liquidated damages pursuant to the ADEA in an amount equal to that person's back pay and benefits award, together with interest thereon;

7. Declaring that Plaintiffs are entitled to test the validity of the releases of age discrimination under the ADEA in a court of law without tendering back any benefits received, or suffering a discontinuation of benefits to be received, pursuant to said release, regardless of whether said release is ultimately determined to comply with the OWBPA;
8. Declaring that the releases of age discrimination under the ADEA presented by Seagate to Plaintiffs and other similarly situated employees of Seagate are invalid as a matter of law, that said releases were not and cannot as a matter of law be ratified, and that Plaintiffs and other Opt-In Plaintiffs who signed such releases are entitled to keep the benefits received and to continue to receive said benefits while pursuing rights under the ADEA;
9. Awarding attorneys fees and costs as appropriate pursuant to the relevant statutes;
10. Awarding prejudgment interest, costs and disbursement as appropriate herein; and
11. Awarding such other and further relief as the Court and/or jury deems equitable, appropriate and just.


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