

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ARTHUR C. RUPERT, LINDA K.)	
AUSTIN, LARRY L. CAMPBELL,)	Civil Action No.
KENNETH J. HUNT and WADE C.)	
BITTNER, individually and on behalf of)	
all others similarly situated,)	
)	
Plaintiffs,)	ELECTRONICALLY FILED
)	
vs.)	
)	
PPG INDUSTRIES, INC.,)	
)	JURY TRIAL DEMANDED
Defendant.)	

CLASS ACTION COMPLAINT

AND NOW come Representative Plaintiffs, Arthur C. Rupert, Linda K. Austin, Larry L. Campbell, Kenneth J. Hunt and Wade C. Bittner, individually and on behalf of all others similarly situated (“Plaintiffs”), by and through their counsel, Obermayer Rebmann Maxwell & Hippel LLP, and file this Class Action Complaint against Defendant PPG Industries, Inc. (“PPG” or “Defendant”), pursuant to the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq* (“ADEA”), and the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1001, *et seq*, and aver as follows:

THE PARTIES

1. Plaintiff Arthur C. Rupert (“Mr. Rupert”) is an individual who is currently 58 years old and resides at 40 Trump Road, Cheswick, PA 15024.
2. Plaintiff Linda K. Austin (“Ms. Austin”) is an individual who is currently 56 years old and resides at 4092 Valleyvue Drive, Gibsonia, PA 15044.

3. Plaintiff Larry L. Campbell (“Mr. Campbell”) is an individual who is currently 61 years old and resides at 1402 Basinger Court, Raleigh, NC 27612.

4. Plaintiff Kenneth J. Hunt (“Mr. Hunt”) is an individual who is currently 58 years old and resides at 2817 Kennerly Road, Irmo, SC 29063.

5. Plaintiff Wade C. Bittner (“Mr. Bittner”) is an individual who is currently 52 years old and resides at 842 Linneys Mill Road, Union Grove, NC 28689.

6. Defendant PPG is a Pennsylvania corporation with a principal place of business in Pittsburgh, Pennsylvania.

7. Mr. Rupert, Ms. Austin, Mr. Campbell, Mr. Hunt and Mr. Bittner are all former employees of PPG.

PROCEDURAL HISTORY

8. On October 25, 2006, Mr. Rupert filed charges of age discrimination against PPG with the Equal Employment Opportunity Commission (“EEOC”).

9. On November 3, 2006, Ms. Austin filed charges of age discrimination against PPG with the EEOC.

10. On November 8, 2006, Mr. Campbell filed charges of age discrimination against PPG with the EEOC.

11. On November 27, 2006, Mr. Hunt filed charges of age discrimination against PPG with the EEOC.

12. On November 27, 2006, Mr. Bittner filed charges of age discrimination against PPG with the EEOC.

JURISDICTION

13. Plaintiffs invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1331, 29 U.S.C. § 1132(e)(1), and 29 U.S.C. § 216(b), as made applicable by 29 U.S.C. § 626 (b).

VENUE

14. Venue is properly laid within the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) and 29 U.S.C. § 1132(e)(2), as the acts complained of by the Plaintiffs were primarily committed or occurred within this District, and PPG resides in this District.

CLASS ACTION ALLEGATIONS

15. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil Procedure 23(a), and 23(b)(1), (2) and (3) and as a collective action pursuant to 29 U.S.C. § 216(b) on behalf of all former salaried employees of PPG whose employment with PPG within the United States was terminated by PPG or who were pressured by PPG to resign or retire and who were at least 40 years of age at the time of such termination, resignation or retirement.

16. The Class of Plaintiffs is so numerous as to make it impractical to bring all eligible members of the class before the Court. Based on PPG's pervasive practice of ridding itself of older employees, Plaintiffs believe that there are thousands of Class Members. In many instances the affected Class Members are unaware that they may have viable claims against PPG.

17. Multiple common questions of law and fact affect the rights of each Member of the Class, including but not limited to the following:

- a. Was the Class Member formerly a salaried employee of PPG?
- b. Was the Class Member's employment terminated by PPG or was the Class Member pressured by PPG to resign or retire?

- c. Was the Class Member at least 40 years of age at the time that his employment by PPG ended?
- d. Was the termination of the Class Member's employment motivated, at least in part, by the Class Member's age?
- e. Was the Class Member replaced by one or more younger employees?
- f. If a Class Member had continued working for PPG beyond the time his employment was terminated, would he have obtained vested pension benefits, or greater vested benefits?
- g. Did the termination of a Class Member's employment by PPG interfere with his attainment of a pension benefit or a greater pension benefit?
- h. Are any purported waivers of claims against PPG made by a Class Member part of an agreement between PPG and that Class Member that is written so as to be understood by that Class Member or by the average individual?
- i. Does the waiver of claims against PPG made by a Class Member specifically refer to rights or claims arising under the ADEA?
- j. Does the waiver of claims against PPG made by a Class Member purport to waive future claims?
- k. Is there valid consideration for a Class Member's purported waiver of claims against PPG?
- l. Was each Class Member that has executed a purported release in favor of PPG advised in writing by PPG to consult an attorney?
- m. Was each Class Member that entered into an agreement with PPG that contains a waiver, given at least 21 days to consider the agreement?
- n. Was each Class Member that entered into an agreement with PPG that contains a waiver, given a period of at least 7 days to revoke such Agreement?
- o. Was each Class Member that executed a waiver of claims in favor of PPG given the information specified in 29 U.S.C.A. §626(f)(1)(H)?

18. The Plaintiffs' claims are typical of the claims of the Members of the Class, arising from the illegal termination by PPG of their employment.

19. Plaintiffs will assure the fair and adequate representation of all Members of the Class, and have no conflict with other Class Members in the maintenance of this action. Their interests in this action are antagonistic to the interests of PPG. Plaintiffs are aware that they cannot settle this Class action without Court approval and will vigorously pursue the Class claims throughout the course of this litigation.

20. Plaintiffs will also assure the fair and adequate representation of the Class by their retention of attorneys who are experienced in class actions. Plaintiffs' counsel have agreed with Plaintiffs to pay all reasonable costs in this case contingent upon the outcome of this case.

21. If pursued as a series of individual claims, this action could substantially affect the rights of similarly situated individuals who might pursue their claims against PPG. In addition, PPG might, in that situation, be confronted with inconsistent or varying adjudications.

22. The conduct of PPG alleged herein is generally applicable to the Class and the declaratory and injunctive relief sought herein is, therefore, appropriate.

23. A class action is a superior method to adjudicate this controversy, because the claims of the Class Members are virtually identical, as they raise the same questions of law and require the same kind of proof. The common questions of law and fact clearly predominate over individual issues and facts.

24. Because many of the individual claims would be too small to justify individual actions by Class Members, most Class Members are unlikely to have any interest in individually controlling the prosecution of this case. To the extent that certain individuals do desire to control the litigation, they can opt out of the Rule 23 Class or decline to sign a consent to be part of the Section 216(b) collective action.

25. Because a large number of the illegal terminations by PPG took place in Pittsburgh, because PPG is headquartered in Pittsburgh, and because of the federal claims asserted herein, this is an appropriate forum for this nation-wide class action.

26. Plaintiffs believe and therefore aver that there are no unusual legal or factual issues which would create manageability problems. Factual issues as to the measure of damages can be handled on an individual basis.

FACTUAL BACKGROUND

General Allegations Regarding PPG's Conduct

27. Historically, PPG had always been a company that valued its employees and recognized that, because its businesses were those that depended on technical innovation, its success was tied very closely to the creativity, satisfaction and commitment of its employees. Consequently, PPG had always treated its employees well and it came to be thought of as the type of stable employer where an individual could spend his entire career.

28. In or about 1997, when Raymond LeBoeuf became Chairman of the Board of PPG, PPG's longstanding corporate philosophy of commitment to its employees began to erode. Under LeBoeuf's leadership, PPG embarked upon an aggressive program of cost-cutting, "belt-tightening" and "efficiency improvement."

29. One of the primary methods of cost-cutting employed by PPG was an aggressive program of reductions in force, or "RIF's". Starting at the time of LeBoeuf's ascension, and continuing until the present, PPG has undergone hundreds of RIF's in the name of cost-cutting and efficiency improvements.

30. Unfortunately, the selection of individuals that would be the victims of these work

force-reductions, increasingly were being made not on the basis of the level of competence, performance, or dedication of the employees, but rather, on the basis of their age.

31. PPG realized that older employees, who generally had more experience, also generally had higher salaries, and were closer to retirement, at which time their vested retirement benefits would become payable. PPG also realized that the continued employment of those older employees would increase those retirement benefits.

32. Under LeBoeuf's reign, members of Senior Management of PPG instilled a corporate-wide mentality that the older employees were "not pulling their weight" and that an increasingly competitive business environment justified their removal by the company and the retention of the cheaper and, allegedly, more aggressive younger employees.

33. The foregoing attitude filtered down from upper management to the ranks of middle managers, who with the tacit if not the express blessing of their superiors and under pressure to cut costs, were only too happy to focus their reduction-in-force attentions on older employees. This legacy of age discrimination is institutionalized throughout the company.

34. Mechanisms for PPG's age discrimination varied, but certain practices became highly prevalent within the company. The most common manifestation would be for PPG to simply call an older employee into a conference room and inform him that his employment with PPG was ending immediately. Typically, no explanation would be given, other than "corporate downsizing", "reduction in force" or the elimination of the employees' position. In many cases, the employees would specifically be told that their termination had nothing to do with the quality of their work or performance history.

35. In some cases, PPG would, in advance of the older employee's termination, institute a concerted effort to fabricate poor performance reviews, so that it would ultimately

appear that there was a justifiable basis for the termination. In these cases, it is frequently obvious that years of favorable performance reviews are followed by an abrupt change to poor reviews.

36. If the older employee happened to be near retirement age, PPG would often couch its forced termination of the employee as the offer of a “retirement package.” The proffered “retirement package” was, however, exactly the same as what other terminated employees were being offered.

37. If an employee hesitated at accepting such a retirement package, he or she often would, with varying degrees of subtlety, be threatened by PPG with the results of the poor performance reviews that had been fabricated, which were used as a lever to force retirement.

38. In cases where the older employee was not sufficiently close to retirement age to offer him a “retirement package” and where a sufficiently damaging performance record had been fabricated, PPG would often simply pressure the employee to resign, rather than retire, thereby making the cessation of his employment appear to be the result of the employee’s decision, not PPG’s.

39. The termination of an older employee was usually followed by the delegation of his work to one or more younger employees.

40. As, over the years, PPG became more sophisticated in its age discrimination, it learned to take steps to camouflage this fact. As part of this scheme, PPG would seldom immediately hire or promote a younger person to the position held by the terminated older employee. At a minimum, a different title would be used. Often the position was left unfilled for a period of time and the responsibilities simply distributed among existing employees. After

sufficient time had passed to obscure the connection between the termination and a younger employee's assumption of the position, PPG would then fill the position.

41. It would also not be unusual for PPG to terminate an older employee with decades of tenure and the concomitant accrual of benefits, and then offer to hire him back to do the same work as a contract employee – without the benefits he had labored to accrue.

42. PPG's systematic age discrimination began at or about the time Mr. LeBoeuf became CEO and has continued to the present. While PPG appears to have focused especially on its technical, scientific and research and development employees, as well as its marketing force, its age discrimination program has been implemented in every corner of PPG's organization and in every PPG location in the United States.

43. During the decade during which it has been methodically terminating its older employees, PPG has become quite sophisticated in the process. It has attempted to refine its techniques so as not to run afoul of the various federal statutes designed to protect employees from the very conduct in which PPG has been engaged.

44. In fact, PPG has become extremely focused on its agenda of eliminating older workers in order to meet short-term quarterly financial goals, to the detriment of its primary business.

45. PPG's program of elimination of older workers has had disastrous consequences for the thousands of employees who have been terminated, and the human cost has been enormous.

Allegations Concerning Mr. Rupert

46. Mr. Rupert was born on October 26, 1948 and is presently 58 years of age.

47. Mr. Rupert was first employed by PPG in 1980. From 1980 until 1986, he was

employed in the operations planning department. In 1986, he was promoted to the position of Industrial Sales Service Manager – Aluminum Extrusions.

48. In 1987, he joined the Springdale General Industrial Regular Office as an Industrial Sales Coordinator. After having been promoted to Sales Service Supervisor, Mr. Rupert's most recent position was Manager of Liquid Pricing and Quotations, in the General Industrial Business Unit located in Springdale, Pennsylvania.

49. In that position, he was in charge of pricing of new products in the General Industrial product line, for setting corporate profit guidelines on these products, which numbered between 6,000 and 7,000, and for generating formal quotations.

50. During his final year of employment with PPG, Mr. Rupert typically worked between 48 and 55 hours per week.

51. Mr. Rupert's performance was acknowledged by PPG and he consistently received good reviews of his work.

52. During his tenure at PPG, Mr. Rupert was regularly commended by customers of PPG for his efforts on their behalf. These customers included the Cupples Product Division of the H.H. Robertson Company, Linetec, Syn-Tech Window Systems, Inc., Niles Manufacturing & Finishing, Inc. and York International.

53. During the entire time that he worked for PPG, Mr. Rupert was repeatedly recognized for the quality of his work and the effort and dedication that he brought to his job. He was nominated for quality recognition awards, was commended for efforts that were "a true example of what teamwork and support really is." He was recognized for his efforts in generating new business, for his "dedication and commitment to servicing [PPG's] customers." PPG realized that "the Industrial Coatings business ha[d] been successful... because of

contributions like yours,” and that “[c]ontributions like this are at the heart of [PPG’s] success in C&R Industrial Coatings.”

54. Throughout his uninterrupted twenty-six year career with PPG, Mr. Rupert was a hard-working, efficient, conscientious, and highly motivated employee.

55. Plaintiff was fifty-seven years of age as of January 23, 2006.

56. On January 23, 2006, Gerald Dooley, who had been one of Mr. Rupert's supervisors for approximately one month, unexpectedly called him into a conference room where John Prazenica, a PPG Human Resources Director, informed him that his position was being eliminated “due to corporate down-sizing,” after twenty-six years of continuous employment with PPG. Mr. Dooley left the room almost immediately.

57. Mr. Prazenica offered no reason for Mr. Rupert’s termination, other than the alleged “downsizing.” However, he did tell Mr. Rupert that he had to vacate his office, immediately.

58. Mr. Rupert was permitted by PPG to briefly return to his office—but only under escort—to pick up his personal possessions.

59. PPG’s stated reason for Mr. Rupert’s discharge—“downsizing”—is simply a pretext to mask PPG’s age-related animus and a specific intent to eliminate or reduce benefits to high pension beneficiaries.

60. Immediately after his termination, PPG transferred a younger employee into Mr. Rupert’s position. When Mr. Rupert had returned to his office to collect his personal belongings, this individual had come into the office with tears in his eyes and said “I just want you to know how bad I feel. They just told me I have to do your job. I don’t want to do your job. I don’t know how to do your job.” Two weeks later, this individual resigned.

61. PPG terminated Mr. Rupert before he would have been eligible for substantially greater pension benefits, and did so specifically to deprive him of those benefits.

62. Had Mr. Rupert been permitted to work until his normal retirement age of 66, his pension and other retirement benefits would have been substantially greater than the amount he currently receives as a result of his termination.

63. At the time of his discharge, Mr. Rupert was entitled to five weeks of paid vacation per year.

64. PPG treated Mr. Rupert less favorably than similarly situated younger and less experienced employees, and its conduct was motivated by age-related animus and a specific intent to eliminate or reduce benefits to high pension beneficiaries in violation of 29 U.S.C. §1140.

65. PPG's conduct in terminating Mr. Rupert was contrary to and in willful violation of the provisions of 29 U.S.C. §623(a), inasmuch as it was based in whole or in part, on his age.

66. As a direct and proximate result of PPG's conduct in terminating Mr. Rupert, he has lost and will continue to lose the benefits of his employment with PPG, including, but not limited to, salary, bonuses, vacation time, holiday time, insurance benefits, and pension benefits in violation of 29 U.S.C. §1140.

Allegations Concerning Ms. Austin

67. Ms. Austin was originally hired by PPG to work in the mail room when she was just 18 years old. She spent the next 38 years—the entirety of her working career—at PPG. During that time, she never received a bad performance review and in 1998 and 1999 received performance bonuses.

68. After her start in the mail room, she became a receptionist and then a clerk in the accounting department. After becoming a secretary, she started night school working towards a chemistry degree. In 1973, while still in school, she became a lab technician in gas chromatography, a position she maintained for 7 years. She continued her advancement when she became a technical correspondent for Trade Sales in the House Paints Division. In 1984, she was promoted to Styling Coordinator for the color programs for automotive paints. The next year she was made Sales Coordinator for Powder Coatings and thereafter transferred to Marketing Services for APA and then Marketing Services for Toyota. She was then promoted to Senior Technical Coordinator and then in 1995, to Color Coordinator for Mack Truck.

69. As of 2000, Ms. Austin was the Supervisor of the Color Lab in the General Industrial Business Unit, located in Springdale, Pennsylvania. She was responsible for prioritizing color development and interfacing between customers and PPG field personnel and for supervising about ten people that reported to her.

70. By that time, Ms. Austin had begun to have difficulties with her vision as a result of a severe case of Graves disease. In 2000, she had a total of seven surgeries on her eyes involving, *inter alia*, removal of bone behind her eyes, as well as tissue removal to save her vision and, consequently, was off work for approximately 9 months.

71. Shortly after she returned to work at PPG in early 2001, when she was 51 years old, PPG, while allowing her to keep her title, removed from her the responsibilities for supervising the ten employees in the Color Lab and gave those responsibilities to a male employee who was in his early 30's. She was given no reason for this action.

72. In 2003, Ms. Austin developed breast cancer, and she was forced to take time off from work. After having a lumpectomy, four months of chemotherapy and four months of

radiation, she immediately returned to work in February, 2004, having missed approximately 9 months of work.

73. When she returned to work, PPG continued to deny her the supervisory responsibilities she had previously exercised.

74. Thereafter, in May 2005, her cancer returned and she was forced to undergo a radical mastectomy, followed by 5 months of chemotherapy, which ended in October, 2005.

75. On November 1, 2005, she again returned to work. Less than three months later, in January, 2006, when she was 55 years old, PPG terminated her employment.

76. On January 23, 2006, Ms. Austin was escorted by two PPG employees into a conference room where Phil Jones, Technical Director of the Springdale facility, and John Prozenica, a Human Resources employee, were waiting for her. They told her that after 38 years of dedicated service, she was being “laid off” until July at which time she would qualify for early retirement. In effect, her employment with PPG was terminated. They commenced reading a prepared speech, which PPG has since refused to provide to Ms. Austin.

77. This information came as such a shock, that Ms. Austin nearly lost consciousness and had to be revived with smelling salts.

78. In a remarkable display of insensitivity, Messrs. Jones and Prozenica waited for Ms. Austin to “recover” and then continued the carefully-scripted termination. They told her that the reason for her termination was a “down-sizing” necessitated by the fact that the General Industrial Group hadn’t “met plan” and that it was effective immediately.

79. They then presented her with a Separation Agreement which they asked her to sign.

80. After the meeting, they took her ID card and then had her escorted out of the building to her car. After she got into her car, Ms. Austin was too upset to drive, and sat in her car in the parking lot crying for almost two hours.

81. She ultimately signed the Separation Agreement on February 15, 2006.

82. Since her termination, Ms. Austin has tried, without success, to find another job.

83. Because she is divorced and her PPG salary was the only income in her household, she has been forced to use her PPG savings plan to fund the mortgage payments on her home since her termination. Those funds will soon be depleted, at which time she will likely lose her house.

84. Ms. Austin had specifically planned to continue working at PPG until she reached the age of 66.

85. PPG's stated reason for Ms. Austin's discharge—"down-sizing"—is simply a pretext to mask PPG's age-related animus and a specific intent to eliminate or reduce benefits to high pension beneficiaries.

86. PPG terminated Ms. Austin before she would have been eligible for substantially greater pension benefits, and did so specifically to deprive her of those benefits.

87. Had Ms. Austin been permitted to work until her normal retirement age of 66, as she had planned, her pension and other retirement benefits would have been substantially greater than the amount she currently receives as a result of her termination.

88. At the time of her discharge, Ms. Austin was entitled to five weeks of paid vacation per year.

89. PPG treated Ms. Austin less favorably than similarly situated younger and less experienced employees, and its conduct was motivated by age-related animus and a specific

intent to eliminate or reduce benefits to high pension beneficiaries in violation of 29 U.S.C. §1140.

90. PPG's conduct in terminating Ms. Austin's employment was contrary to and in willful violation of the provisions of 29 U.S.C. §623(a), inasmuch as PPG's decision to terminate her was based, in whole or in part, on her age.

91. Immediately after her termination, Ms. Austin's position was given to her nominal, but younger supervisor, but within a matter of a few weeks, her responsibilities were divided among several other younger employees.

92. As a direct and proximate result of PPG's conduct in terminating Ms. Austin's employment on January 23, 2006, she has lost and will continue to lose the benefits of her employment with PPG, including but not limited to, salary, bonuses, vacation time, holiday time, insurance benefits, and pension benefits in violation of 29 U.S.C. §1140.

Allegations Concerning Mr. Campbell

93. Mr. Campbell's employment with PPG was terminated as of February 28, 2006. At the time, he was 61 years old and had been working for PPG for almost 13 years.

94. At the time of his termination, Mr. Campbell was a salesman in the General Industrial Business Group, working in Raleigh, North Carolina.

95. His salary when he was terminated was \$75,000.00 and he was also entitled to bonuses based on his sales.

96. During his entire tenure at PPG, Mr. Campbell had consistently received excellent performance reviews.

97. In early 2006, Mr. Campbell was told by his supervisor, John Shaffer, that his performance had suddenly become unsatisfactory, that he was putting him on a performance

improvement plan, and that if his performance did not immediately improve, he would have to put him on probation.

98. There was no objective basis to support the statement that Mr. Campbell's performance was unsatisfactory. His performance at that time was on par with previous years, which had been deemed commendable.

99. Shortly thereafter, Mr. Shaffer suggested that Mr. Campbell consider taking a termination package being offered to him by PPG and retiring early. Mr. Shaffer said that, in light of his unsatisfactory performance review, if he decided not to retire, and if his performance improvement plan was not satisfactorily completed within 90 days, he would have no alternative but to fire him.

100. Faced with the pressure of a false inferior performance review, and the threat of being fired based on that false review, Mr. Campbell acceded to the pressure, and "retired" effective February 28, 2006.

101. The "termination package" that PPG offered and that Mr. Campbell ultimately was forced to accept contained precisely the same components as the termination benefits offered to other employees who were involuntarily terminated by PPG.

102. Immediately after his "retirement," Mr. Campbell's duties were assumed by an existing male employee in his early 30's. Shortly thereafter, a newly-hired female employee, who was in her 20's, assumed his duties.

103. PPG's stated reason for Mr. Campbell's termination—substandard performance—was simply a pretext to mask PPG's age-related animus and a specific intent to eliminate or reduce benefits to high pension beneficiaries.

104. PPG terminated Mr. Campbell before he would have been eligible for substantially greater pension benefits, and did so specifically to deprive him of those benefits.

105. Had Mr. Campbell been permitted to work until his normal retirement age of 66, his pension and other retirement benefits would have been substantially greater than the amount he currently receives as a result of his termination.

106. At the time of his discharge, Mr. Campbell was entitled to five weeks of paid vacation per year.

107. PPG treated Mr. Campbell less favorably than similarly situated younger and less experienced employees, and its conduct was motivated by age-related animus and a specific intent to eliminate or reduce benefits to high pension beneficiaries in violation of 29 U.S.C. §1140.

108. PPG's conduct in terminating Mr. Campbell was contrary to and in willful violation of the provisions of 29 U.S.C. §623(a), inasmuch as PPG's threat of probation was based, in whole or in part, on his age.

109. As a direct and proximate result of PPG's conduct in terminating Mr. Campbell on February 28, 2006, he has lost and will continue to lose the benefits of his employment with PPG, including, but not limited to, salary, bonuses, vacation time, holiday time, insurance benefits, and pension benefits in violation of 29 U.S.C. §1140.

Allegations Concerning Mr. Hunt

110. Mr. Hunt was hired by PPG in January, 1977 in Oak Creek, Wisconsin. Twenty-nine years later, almost to the day, when he was 57 years old, and had spent his entire career at PPG, he was terminated.

111. After he started at PPG, Mr. Hunt attended college at night and, in 1981 obtained his bachelors degree in chemistry and became a developmental chemist at PPG.

112. After being promoted to Liason for Automotive Group in 1984, in 1990, Mr. Hunt was transferred to Winnsboro, South Carolina, as a Service Representative for the General Industrial Group. Within a couple years, he was promoted to be Lead Service Representative in Winnsboro, supervising up to 7 people.

113. In 2002, he became a floating service representative for South Carolina.

114. In 2003, he agreed to commute to Ladson, South Carolina, where PPG had a need for someone with his background.

115. Within a year, PPG hired someone in his 30's to perform the job Mr. Hunt had been doing in Ladson and Mr. Hunt was forced to start commuting to a PPG facility in North Carolina.

116. Then, in August, 2005, PPG told him that his services were absolutely required to start an operation in Arkansas and Oklahoma. Mr. Hunt dutifully agreed to commute from South Carolina to Arkansas and Oklahoma until this operation was up and running. His salary and bonus at the time was \$72,000.00.

117. In late January, 2006, Mr. Hunt's boss, Greg Rickard, told him that he had to promptly complete a P&LP self evaluation report and that he had to meet with him the following week at a local motel to discuss the report. When he arrived at the motel to deliver the report and meet with Greg Rickard, Mr. Hunt found, waiting for him along with Mr. Rickard, Rhett Wyman from PPG's Human Resources Department.

118. Notwithstanding his 29 years of continuous employment by PPG and his consistently good performance reviews, Messrs. Rickard and Wyman told Mr. Hunt that his employment with PPG was being terminated. Mr. Hunt was 57 years old at the time.

119. While they attempted to couch his termination in terms of “retirement,” it was a completely unilateral decision by PPG and was, therefore, clearly a termination.

120. This termination came as a complete surprise to Mr. Hunt and he was emotionally traumatized during the remainder of the meeting.

121. Immediately after his termination, PPG transferred a younger employee into Mr. Hunt’s position.

122. PPG terminated Mr. Hunt before he would have been eligible for substantially greater pension benefits, and did so specifically to deprive him of those benefits.

123. Had Mr. Hunt been permitted to work until his normal retirement age of 66, his pension and other retirement benefits would have been substantially greater than the amount he currently receives as a result of his termination.

124. At the time of his discharge, Mr. Hunt was entitled to five weeks of paid vacation per year.

125. PPG treated Mr. Hunt less favorably than similarly situated younger and less experienced employees, and its conduct was motivated by age-related animus and a specific intent to eliminate or reduce benefits to high pension beneficiaries in violation of 29 U.S.C. §1140.

126. PPG’s conduct in terminating Mr. Hunt’s employment was contrary to and in willful violation of the provisions of 29 U.S.C. §623(a), inasmuch as PPG’s employment decision to terminate him was based, in whole or in part, on his age.

127. As a direct and proximate result of PPG's conduct in terminating Mr. Hunt's employment, he has lost and will continue to lose the benefits of his employment with PPG, including, but not limited to, salary, bonuses, vacation time, holiday time, insurance benefits, and pension benefits in violation of 29 U.S.C. §1140.

Allegations Concerning Mr. Bittner

128. Mr. Bittner's employment with PPG was also terminated by PPG on January 31, 2006. At the time, he was 51 years old. Mr. Bittner was a Sales Services Representative in the General Industrial Business Group, and had been with PPG for 19 years.

129. PPG hired Mr. Bittner as a Technical Service Representative in Allentown, Pennsylvania in February, 1987. He remained in Allentown for about two years at which time he relocated to South Carolina because one of PPG's clients opened a plant there.

130. In 2000, Mr. Bittner moved back to the Allentown area, because that's where PPG then needed his services. He remained there until 2005, when he moved to North Carolina, in order to assist PPG in obtaining a new account.

131. During his entire tenure at PPG, Mr. Bittner never had any performance problems.

132. In 2005, Mr. Bittner required knee-replacement surgery. He was off work from July to December of that year.

133. During that period, he made arrangements to have a new house built and the closing took place in November, 2005.

134. In late January, 2006, Mr. Bittner's boss, Greg Rickard, called him and asked him to meet him at a motel in Charlotte on the pretext of reviewing his P&LP self-evaluation.

135. When Mr. Bittner arrived at the motel, Rhett Wymann, from PPG Human Resources, was with Greg Rickard. Mr. Rickard read a letter to Mr. Bittner stating that his

employment with PPG was being terminated “due to a difficult business climate.” Mr. Bittner was 52 years old at the time.

136. The only explanation given for this termination was an organizational “down-sizing.”

137. Since his termination, Mr. Bittner has unsuccessfully searched for a job and has been using his savings to make the payments on his mortgage.

138. At the time of his termination, Mr. Bittner had a salary in excess of \$73,000 and was entitled to bonuses based on sales.

139. PPG terminated Mr. Bittner before he would have been eligible for substantially greater pension benefits, and did so specifically to deprive him of those benefits.

140. Had Mr. Bittner been permitted to work until his normal retirement age of 66, his pension and other retirement benefits would have been substantially greater than the amount he currently receives as a result of his termination.

141. At the time of his discharge, Mr. Bittner was entitled to five weeks of paid vacation per year.

142. PPG treated Mr. Bittner less favorably than similarly situated younger and less experienced employees, and its conduct was motivated by age-related animus and a specific intent to eliminate or reduce benefits to high pension beneficiaries in violation of 29 U.S.C. §1140.

143. PPG’s conduct in terminating Mr. Bittner’s employment was contrary to and in willful violation of the provisions of 29 U.S.C. § 623(a), inasmuch as PPG’s employment decision to terminate him was based, in whole or in part, on his age.

144. As a direct and proximate result of PPG’s conduct in terminating Mr. Bittner’s

employment on January 23, 2006, he has lost and will continue to lose the benefits of his employment with PPG, including, but not limited to, salary, bonuses, vacation time, holiday time insurance benefits, and pension benefits in violation of 29 U.S.C. § 1140.

COUNT I
Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq

145. Plaintiffs hereby repeat and incorporate by reference the allegations of Paragraphs 1 through 144 above as if fully set forth herein.

146. Mr. Rupert, as a 57-year-old employee of PPG, was a member of a protected class.

147. Mr. Rupert was well-qualified for the position he held.

148. Mr. Rupert suffered an adverse employment action when his employment was terminated by PPG and he was replaced by a younger employee. That adverse employment action occurred under circumstances giving rise to an inference of age discrimination.

149. PPG's stated justification for terminating Mr. Rupert was a pretext for willful age-related discrimination.

150. Mr. Rupert's age was a motivating factor in his termination.

151. By terminating his employment, PPG discriminated against Mr. Rupert in the terms and conditions of his employment on the basis of his age in violation of the ADEA, 29 U.S.C. § 621, et seq.

152. Ms. Austin, as a 55-year-old employee of PPG, was a member of a protected class.

153. Ms. Austin was well-qualified for the position she held.

154. Ms. Austin suffered an adverse employment action when her employment was terminated by PPG and was replaced by younger employees. That adverse employment action occurred under circumstances giving rise to an inference of age discrimination.

155. PPG's stated justification for terminating Ms. Austin was a pretext for age-related discrimination.

156. Ms. Austin's age was a motivating factor in her termination.

157. By terminating her employment, PPG discriminated against Ms. Austin in the terms and conditions of his employment on the basis of her age in violation of the ADEA, 29 U.S.C. § 621, *et seq.*

158. Mr. Campbell, as a 61-year-old employee of PPG, was a member of a protected class.

159. Mr. Campbell was well-qualified for the position he held.

160. Mr. Campbell suffered an adverse employment action when he was forced to retire from PPG. That adverse employment action occurred under circumstances giving rise to an inference of age discrimination.

161. PPG's stated justification for forcing Mr. Campbell to retire was a pretext for age-related discrimination.

162. Mr. Campbell's age was a motivating factor in forcing him to retire.

163. By forcing him to retire and replacing him with a younger employee, PPG discriminated against Mr. Campbell in the terms and conditions of his employment on the basis of his age in violation of the ADEA, 29 U.S.C. § 621, *et seq.*

164. Mr. Hunt, as a 57-year-old employee of PPG, was a member of a protected class.

165. Mr. Hunt was well-qualified for the position he held.

166. Mr. Hunt suffered an adverse employment action when his employment was terminated by PPG. That adverse employment action occurred under circumstances giving rise to an inference of age discrimination.

167. PPG's stated justification for terminating Mr. Hunt was a pretext for willful age-related discrimination.

168. Mr. Hunt's age was a motivating factor in his termination.

169. By terminating his employment and replacing him with a younger employee, PPG discriminated against Mr. Hunt in the terms and conditions of his employment on the basis of his age in violation of the ADEA, 29 U.S.C. § 621, *et seq.*

170. Mr. Bittner, as a 51-year-old employee of PPG, was a member of a protected class.

171. Mr. Bittner was well-qualified for the position he held.

172. Mr. Bittner suffered an adverse employment action when his employment was terminated by PPG. That adverse employment action occurred under circumstances giving rise to an inference of age discrimination.

173. PPG's stated justification for terminating Mr. Bittner was a pretext for willful age-related discrimination.

174. By terminating his employment, PPG discriminated against Mr. Bittner in the terms and conditions of his employment on the basis of his age in violation of the ADEA, 29 U.S.C. § 621, *et seq.*

175. PPG has similarly discriminated against all Class Members in the terms and conditions of employment, on the basis of their age, in violation of the ADEA, 29 U.S.C. § 621, *et seq.*

COUNT II

Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, et seq

176. Plaintiffs hereby repeat and incorporate by reference the allegations of Paragraphs 1 through 175 above as if fully set forth herein.

177. PPG has established the PPG Industries, Inc. Retirement Income Plan (“the Plan”) which is a qualifying retirement plan (“Plan”) and is covered under the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1001, *et seq.*

178. At all relevant times, PPG has been the Plan administrator of the Plan within the meaning of ERISA, because it has been so designated in the governing plan instruments. As such, PPG is a fiduciary with respect to the Plan.

179. PPG employed Mr. Rupert on a full-time basis from 1980 through January 2006, at which time his employment with PPG was abruptly terminated without advance notice or cause. As such, Mr. Rupert is a participant under the Plan.

180. Mr. Rupert was, at the time of his unlawful termination by PPG, 57 years old. As a consequence of the unlawful and abrupt termination of his employment, Mr. Rupert now has drastically reduced eligibility for retirement benefits under the Plan.

181. At the time of the involuntary termination of his employment, Mr. Rupert was a vested participant in the Plan.

182. The Plan calculates an employee’s monthly pension benefit based upon various multipliers to be applied to the employee’s “Final Average Monthly Salary” (“FAMS”). The Plan defines FAMS as the “highest average monthly salary you received for any five consecutive years during the 10 years immediately prior to your retirement.”

183. If PPG had permitted Mr. Rupert to retire at the age of 66, his monthly pension benefit would have been calculated based upon a higher “final average monthly salary” and his pension benefit would have been greater.

184. PPG’s discharge of Mr. Rupert was, in whole or in part, motivated by the intent to reduce his pension benefits, and by the specific intent of interfering with his attainment of the rights to which he would have become entitled under the Plan if he had been permitted to retire at age 66.

185. PPG employed Ms. Austin on a full-time basis from 1968 through January 2006, at which time her employment with PPG was abruptly terminated without advance notice or cause. As such, Ms. Austin is a participant under the Plan.

186. Ms. Austin was, at the time of her unlawful termination by PPG, 55 years old. As a consequence of the unlawful and abrupt termination of her employment, Ms. Austin now has drastically reduced eligibility for retirement benefits under the Plan.

187. At the time of her involuntary termination of employment, Ms. Austin was a vested participant in the Plan.

188. If PPG had permitted Ms. Austin to retire at the age of 66, her monthly pension benefit would have been calculated based upon a higher “final average monthly salary” and her pension benefit would have been greater.

189. PPG’s discharge of Ms. Austin was, in whole or in part, motivated by the intent to reduce her pension benefits, and by the specific intent of interfering with her attainment of the rights to which she would have become entitled under the Plan if she had been permitted to retire at age 66.

190. PPG employed Mr. Campbell on a full-time basis from 1993 through January 2006, at which time he was forced by PPG to retire. As such, Mr. Campbell is a participant under the Plan.

191. Mr. Campbell was, at the time he was forced to retire by PPG, 61 years old. As a consequence of the unlawful and abrupt termination of his employment, Mr. Campbell now has drastically reduced eligibility for retirement benefits under the Plan.

192. At the time of his forced retirement, Mr. Campbell was a vested participant in the Plan.

193. If PPG had permitted Mr. Campbell to retire at the age of 66, his monthly pension benefit would have been calculated based upon a higher “final average monthly salary” and his pension benefit would have been greater.

194. PPG’s discharge of Mr. Campbell was, in whole or in part, motivated by the intent to reduce his pension benefits, and by the specific intent of interfering with his attainment of the rights to which he would have become entitled under the Plan if he had been permitted to retire at age 66.

195. PPG employed Mr. Hunt on a full-time basis from 1977 through January 2006, at which time his employment with PPG was abruptly terminated without advance notice or cause. As such, Mr. Hunt is a participant under the Plan.

196. Mr. Hunt was, at the time of his unlawful termination by PPG, 57 years old. As a consequence of the unlawful and abrupt termination of his employment, Mr. Hunt now has drastically reduced eligibility for retirement benefits under the Plan.

197. At the time of his involuntary termination of employment, Mr. Hunt was a vested participant in the Plan.

198. If PPG had permitted Mr. Hunt to retire at the age of 66, his monthly pension benefit would have been calculated based upon a higher “final average monthly salary” and his pension benefit would have been greater.

199. PPG’s discharge of Mr. Hunt was, in whole or in part, motivated by the intent to reduce his pension benefits, and by the specific intent of interfering with his attainment of the rights to which he would have become entitled under the Plan if he had been permitted to retire at age 66.

200. PPG employed Mr. Bittner on a full-time basis from 1987 through January 2006, at which time his employment with PPG was abruptly terminated without advance notice or cause. As such, Mr. Bittner is a participant under the Plan.

201. Mr. Bittner was, at the time of his unlawful termination by PPG, 51 years old. As a consequence of the unlawful and abrupt termination of his employment, Mr. Bittner now has drastically reduced eligibility for retirement benefits under the Plan.

202. At the time of his involuntary termination of employment, Mr. Bittner was a vested participant in the Plan.

203. If PPG had permitted Mr. Bittner to retire at the age of 66, his monthly pension benefit would have been calculated based upon a higher “final average monthly salary” and his pension benefit would have been greater.

204. PPG’s discharge of Mr. Bittner was, in whole or in part, motivated by the intent to reduce his pension benefits, and by the specific intent of interfering with his attainment of the rights to which he would have become entitled under the Plan if he had been permitted to retire at age 66.

205. PPG has similarly terminated the employment of other Class Members with the specific intent of eliminating or reducing their entitlement to pension benefits.

206. PPG's actions in terminating Plaintiffs' employment and the employment of other Class Members was in violation of and contrary to the provisions of Section 510 of ERISA, which makes it unlawful for an employer to discharge an employee "for the purpose of interfering with the attainment of any right to which such participant may become entitled under the provisions of an employee benefit plan." 29 U.S.C. § 1140.

207. As a direct and proximate result of PPG's conduct, Plaintiffs and all other Class Members have been deprived of their employment and all rights and benefits to be derived therefrom and has been prevented from obtaining retirement benefits to which they were entitled under the Plan.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all of her similarly situated Class Members, pray that this Court:

- a. Enter a judgment declaring this action to be a class action properly maintained pursuant to Rule 23(a) and Rules 23(b)(1)(2) and (3) of the Federal Rules of Civil Procedure;
- b. Enter a judgment declaring this action to be a collective action properly maintained pursuant to 29 U.S.C. §216(b);
- c. Enter a judgment declaring that PPG's conduct in terminating the employment of employees who were 40 years of age or older at the time of termination violates the ADEA;
- d. Enter a judgment declaring that PPG's conduct in terminating the employment of employees who are 40 years of age or older violates Section 510 of ERISA;
- e. Enter an injunction against PPG's unilateral termination of any employee over forty-years of age;

- f. Award damages to the Class for the earnings and benefits lost by Class Members resulting from the illegal termination of their employment by PPG;
- g. Award liquidated damages to the Class for PPG's willful violation of the ADEA;
- h. Award reasonable attorney's fees, costs and expenses;
- i. Award pre-judgment and post-judgment interest; and
- j. Award such other and further relief that this Court may deem just and proper.

JURY TRIAL DEMANDED ON ALL ISSUES SO TRIABLE

Respectfully submitted,

OBERMAYER REBMANN MAXWELL & HIPPEL LLP

Date: May 24, 2007

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