

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

ELIEZER MANGUAL MORALES	:	
	:	
Plaintiff	:	
	:	
Vs.	:	Civil No. 16-1028
	:	
COMBINED INSURANCE COMPANY	:	
OF AMERICA, THE ACE GROUP OF	:	
COMPANIES, AND COMBINED LIFE	:	
INSURANCE OF NEW YORK	:	
	:	
Defendants	:	

COMPLAINT

TO THE HONORABLE COURT:

COMES now plaintiff through the undersigned attorney, and respectfully alleges and prays:

PLEADINGS COMMON TO ALL COUNTS OR CAUSES OF ACTION

Nature of Action and Jurisdiction

1.- This action is brought pursuant to the Age Discrimination in Employment Act (hereinafter, "ADEA"), 29 U.S.C. §621 et seq., Puerto Rico's Law No. 100 of June 30, 1959, 29 L.P.R.A. §146 et seq., and seeking compensatory, double and liquidated damages, severance pay, back pay and equitable and injunctive relief to seek redress for defendants' discriminatory practices against Plaintiff Eliezer Mangual Morales on the basis of age.

2.- This Honorable Court has jurisdiction to entertain this action, pursuant to Section 7 of the ADEA, 29 U.S.C. §626 (c)(1) and under 28 U.S.C. §§1331(A)(4).

3.- Plaintiff further invokes pendent or supplemental jurisdiction of this Court under 28 U.S.C. §1367 to hear Puerto Rico law claims arising from the same nucleus of operative facts. Supplemental jurisdiction of this Honorable Court is invoke to bring state claims pursuant to P.R. Law 100 of June 30, 1959, 29 L.P.R.A. §146 et seq.

4.- Venue is proper in this district pursuant to 28 U.S.C. §1391 (a) and (b), because it is where a substantial part of the events or omissions, giving raise to the claim, occurred.

5.- On May 14, 2015, plaintiff Eliezer Mangual Morales filed a timely charge of discrimination on the basis of age before the Equal Employment Opportunity Commission. A Notice of Right to Sue from the EEOC was issued on November 2, 2015, and received by Plaintiff on November 4, 2015.

6.- This Complaint is being filed within ninety (90) days of receipt of the EEOC Notification of Right to Sue.

7.- Plaintiff demands that all causes of action be tried before a jury.

The Parties

8.- Plaintiff is a citizen of the United States and resident of Moca, Puerto Rico. At the time of defendants' discrimination practice and at the filing of the present complaint, he is 61 years of age. Plaintiff is an employee under the provisions of ADEA, 29 U.S.C. § 630 (f), and is within the protected class under ADEA, 29 U.S.C. § 631(a).

9.-Combined Insurance Company of America, the ACE Group of Companies, and Combined Life Insurance Company of New York, (herein Combined Insurance) is a Domestic Corporation organized under the laws of the Commonwealth of Puerto Rico, with its principal place of business and/or headquarters in Guaynabo, Puerto Rico.

10.- Combined Insurance is a “person” within the meaning of 29 U.S.C. § 631(a).

11.- Combined Insurance is also an “employer” under the ADEA, 29 U.S.C. § 630(b).

12.- Combined Insurance is engaged in an “industry affecting commerce” within the meaning of 29 U.S.C. § 630(h).

13.- Combined Insurance employed more than twenty (20) employees on a daily basis during the relevant period. See, 29 U.S.C. § 630(b).

14.- Plaintiff has worked for Combined Insurance for fourteen (14) years.

15.- Combined Insurance is an employer under the definition provided by Puerto Rico Law No. 100, supra.

16.- Mr. Felix Acevedo and Mr. Vicente Lugo, are supervisors and employees of Combined Insurance.

17.- Mr. Felix Acevedo and Mr. Vicente Lugo are the persons who expressly discriminated against plaintiff because of his age.

18.- Under Puerto Rico Law 100, Mr. Felix Acevedo and Mr. Vicente Lugo are personally liable to Plaintiff.

The Facts

19.- Plaintiff repeats and realleged each and every preceding paragraph as if fully set herein.

20.- Plaintiff started working for Combined Insurance on in 2001, as an Insurance Agent.

21.- At the time of his hiring Plaintiff was 47 years old.

22.- Around a year after beginning to work plaintiff was so successful that he was

promoted to Manager, which permitted him to recruit sales persons to work under his supervision to which he received a percentage of the commissions they earned.

23.- Plaintiff's sales area and supervision were in the Municipalities of Aguadilla, Aguada, Añasco, Rincon, San Sebastian, Moca and Isabel. These Municipalities were later limited to the Municipalities of San Sebastian, Isabela and Moca.

24.- In December 2014 there was a meeting to inform some changes that the company would implement that would divide the island in three (3) regions. The first Region was known as MD1 which included from Camuy to Guaynabo, including the center municipalities from Lares to Aibonito-Comerio. The MD2 Region covered the Este Coast of Puerto Rico and the MD3 Region which covered the South West Coast of Puerto Rico, included Isabel-Quebradilla to Coamo-Santa Isabel.

25.- At the meeting held Mrs. Aida Rodriguez and Mr. Jaime Cruz were in charge of informing all the changes and they told their employees that they could chose the area they wanted to work and inform the Regional Manager, Mr. Felix Acevedo. Plaintiff chose the MD3 Region (South-West) and informed Mr. Felix Acevedo as instructed.

26.- At the beginning of January 2015, plaintiff met with Mr. Felix Acevedo who indicated to him the he was a played rooster (gallo jugao) and that in his team he wanted new blood, referring to younger people. He suggested that plaintiff should procure work in the MD1 Region, of which Mr. Luis Cintron was the Manager in charge, because he didn't worry about having older people.

27.- At a meeting that was called several days later plaintiff informed Mr. Vicente Lugo, Division Manager, of the conversation he had with Mr. Felix Acevedo. Specifically plaintiff told Mr. Lugo that Mr. Felix Acevedo did not accept him in his region although at

the meeting, (that is referred to in averments 24 and 25) he was told that he could choose the area that he wanted to work. That he had chosen the MD3 Region because that was the region that he was working, was the one that he knew best and was the one closest to his home. He informed Mr. Vicente Lugo that Mr. Felix Acevedo had explicitly told him that he wanted younger people in his team and that he should procure work with Mr. Luis Cintron, Manager of the MD1 Region because Mr. Cintron didn't mind having older people working with him. Plaintiff complained to Mr. Vicente Lugo that this was discrimination against him because of his age and that working in the MD1 Region will imply less income and more expenses to him.

28.- Mr. Vicente Lugo informed plaintiff that he would look into the situation but that in the meantime plaintiff should go to work as a sales person with Mr. Jose Perez a Manager that works under the Supervision of Mr. Luis Cintron, at the MD1 Region.

29.- Plaintiff informed Mr. Vicente Lugo that he has worked for Combined Insurance for the last 14 years doing an excellent job and that to work as a sales person his expenses would increase due to the area, since he will have to travel to Guaynabo, Comerio-Aibonito, when his area was the West Coast, and his commissions would also be reduced and as a consequence earning will be drastically reduces.

30.- Mr. Vicente Lugo informed plaintiff that the situation would be resolved. Because plaintiff needed an income he agreed to the change. Since the month of January went by and nothing had changed and the situation of having to travel and having less income as a consequence, plaintiff continued calling Mr. Lugo who informed him that he had spoken to Ms. Debbie Frigo who was in charge of solving plaintiff's complaint and that she would be taking care of solving his problem.

31.- During the months of February, March and the first 3 weeks of April nothing changed. Plaintiff called on several occasions Mr. Vicente Lugo getting the same response.

32.- To plaintiff's surprise on April 27, 2015 he received a letter signed by Mrs. Debbie Frigo, Manager, National Licensing for Combined Insurance, which was dated January 20, 2015. In the same it states that plaintiff employment as a Manager had been terminated effective January 12, 2015. Plaintiff was sent a new contract as a sales person where he was informed that if he did not sign the same within 14 working days he could not continue to work with Combined Insurance.

33.- The area that plaintiff worked as Manager of San Sebastian, Isabel and Moca, was given to a younger employee.

34.- Plaintiff feels discriminated because of his age.

35.- No complaint has ever been filed against plaintiff because of his performance at the previous job that he had performed for defendants. As a consequence of defendants discriminatory practice plaintiff's income has been substantially reduced.

36.- As a consequence of defendants discriminatory practice plaintiff has been humiliated and has suffered emotional pain and suffering.

First Cause of Action
Under ADEA for Discrimination Based on Age

37.- Now appears plaintiff, in this case and repeat, reiterate and reallege each and every allegation contained in the preceding paragraphs, with the same force and effect as if set forth at length herein.

38.- Defendant, Combined Insurance conduct against Plaintiff constitutes

discrimination on the basis of age in violation of ADEA.

39.- Defendant, Combined Insurance orders, changing plaintiff's duties and responsibilities and reduction of his working hours and income, constitutes discrimination of the basis of age in violation of ADEA.

40.- Combined Insurance termination of plaintiff as Manager constitutes discrimination on the basis of age in violation of ADEA.

41.- As a proximate result of Combined Insurance discriminatory practices, Plaintiff has suffered intensely, has been deprived of his means of livelihood, has suffered economic losses and has been emotionally injured.

42.- Combined Insurance is liable to Plaintiff of the back pay, commissions and bonuses he would have been entitled had he been working regular hours in his position as Manager and for his pain, suffering and mental anguish.

43.- Combined Insurance is liable to Plaintiff under this cause of action in an amount not less than \$1,500,000.00.

Second Cause of Action
Punitive Damages

44.- Now appears plaintiff, in this case and repeat, reiterate and reallege each and every allegation contained in the preceding paragraphs, with the same force and effect as if set forth at length herein.

45.- Combined Insurance discriminatory practices against Plaintiff were intentional, malicious and/or carried with reckless indifference towards Plaintiff's rights protected under federal law.

46.- Combined Insurance discriminatory conduct constitutes a willful violation of

plaintiff's clearly established and protected rights and as a result thereof defendant is liable to Plaintiff for Punitive damages which are reasonably estimated in the amount of \$1,500,000.00

Third Cause of Action
Under Puerto Rico Law 100

47.- Now appears plaintiff, in this case and repeat, reiterate and reallege each and every allegation contained in the preceding paragraphs, with the same force and effect as if set forth at length herein.

48.- Combined Insurance discriminatory conduct altered Plaintiff's employment conditions because of Plaintiff's age.

49.- Defendants Combined Insurance conduct constitutes a willful violation of Puerto Rico Law 100, of June 30, 1959, 29 L.P.R.A. §146 et seq.

50.- As an adequate remedy under said statute, defendants Combined Insurance is liable to Plaintiff for double the amount of back pay, front pay, and compensatory damages.

51.- Plaintiff is also entitled to reinstatement as a full time employee.

Fourth Cause of Action
Attorneys Fees and Prejudgment Interest

52.- Now appears plaintiff, in this case and repeat, reiterate and reallege each and every allegation contained in the preceding paragraphs, with the same force and effect as if set forth at length herein.

53.- Combined Insurance are liable to Plaintiff for attorney's and costs under ADEA, 29 U.S.C. §216 (B), and prejudgment interest pursuant to Rule 54 of the Federal Rules of Civil Procedure.

54.- Combined Insurance are liable to Plaintiff for attorney's fees under Puerto Rico Law 100.

TRIAL BY JURY

55.- A Trial by Jury is requested in all causes of actions.

WHEREFORE, plaintiff respectfully prays this Honorable Court to:

- a. Assume Jurisdiction of this action;
- b. An order directing Defendant to reinstate Plaintiff to his former position in Combined Insurance and to cease and desist of any further discriminatory conduct on the basis of age against him.
- c. Back pay, together with interest, for the period that Plaintiff has been deprived of his full salary, as it was awarded to other employees in his previous position.
- d. Lost benefits, both past and future.
- e. Compensatory damages in an amount in excess of \$1,500,000.00.
- f. Grant plaintiff damages and punitive damages against the defendants, and each of them, jointly and severally;
- g. An award of liquidated damages equal to twice the back pay and fringe benefits lost by Plaintiff.
- h. An award of double compensatory damages, back pay, and front pay pursuant to PR law No. 100 which equals \$3,000,000.00.
- i. An award of reasonable attorney's fees, together with costs, litigation expenses, and necessary disbursement.
- j. Any other remedies which this Honorable Court may deem just and proper.

RESPECTFULLY SUBMITTED.

In Aguadilla, Puerto Rico this 7 day of January, 2016.

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