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

ARTHUR C. RUPERT, LINDA K. AUSTIN, LARRY L. CAMPBELL, KENNETH J. HUNT and WADE C. BITTNER, on behalf of themselves and all others similarly situated,	)	Civil Action No. 07-00705
	)	Judge Arthur J. Schwab
Plaintiffs,	)	ELECTRONICALLY FILED
vs.	)	
PPG INDUSTRIES, INC.,	)	JURY TRIAL DEMANDED
Defendant.	)	

FIRST AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT

AND NOW come Representative Plaintiffs, Arthur C. Rupert, Linda K. Austin, Larry L. Campbell, Kenneth J. Hunt and Wade C. Bittner (collectively, the "Representative Plaintiffs"), on behalf of themselves and all others similarly situated, by and through their counsel, Obermayer Rebmann Maxwell & Hippel LLP, and file this First Amended Class and Collective 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 is an indi vidual who is currently 58 years old and resides at 40 Trump Road, Cheswick, PA 15024.

2. Plaintiff Linda K. Austin is an individual who is currently 57 years old and resides at 4092 Valleyvue Drive, Gibsonia, PA 15044.

3. Plaintiff Larry L. Campbell is an individual who is currently 62 years old and resides at 1402 Basinger Court, Raleigh, NC 27612.

4. Plaintiff Kenneth J. Hunt is an individual who is currently 59 years old and resides at 2817 Kennerly Road, Irmo, SC 29063.

5. Plaintiff Wade C. Bittner is an individual who is currently 53 years old and resides at 842 Linneys Mill Road, Union Grove, NC 28689.

6. Defendant PPG is a Pennsylvania corporation with its principal place of business located in Pittsburgh, Pennsylvania. Defendant maintains its Corporate Headquarters at One PPG Place, Pittsburgh, Pennsylvania 15272. At all relevant times, PPG has continuously been an "employer" within the meaning of 29 U.S.C. § 623 of the ADEA, and a "person" within the meaning of 29 U.S.C. § 1140 of ERISA.

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

8. Once the discovery process in this matter is underway, the roles of other unknown conspirators and participants in the wrongdoing identified herein will likely be revealed, and

plaintiffs will then seek leave of court to further amend this Complaint to add new parties and/or new claims.

NATURE OF THIS ACTION AND CORE ALLEGATIONS

9. This is an action brought by the Representative Plaintiffs seeking redress on a collective basis for systemic practices engaged in by PPG to discriminate against its older work force in conducting Reductions-in-Force ("RIFs") and forced retirements over an extended period of time, which practices are continuing in nature. Plaintiffs bring this class and collective action on behalf of themselves and all other present and former similarly situated salaried employees (the "ADEA Class Members") against PPG for discrimination in employment, by:

a. Adopting and employing systems for evaluation of employees in such a way as to permit highly subjective, standardless performance evaluations which allowed PPG to manipulate and distort its older workers' records of performance in order to create a pretext for terminating older workers;

b. Secretively adopting and employing methods for evaluating, ranking and selecting employees for termination in its regular RIFs, which methods were highly subjective, unreliable, invalid, and served as mere pretext, resulting in the termination of disproportionately high numbers of older workers who were never informed of the sham clandestine criteria used to select them for termination;

c. Failing to exercise appropriate supervision or control over managers who select older workers for termination;

d. Maintaining a corporate culture which fosters and encourages pervasive ageist stereotypes and age-related animus, and which permits managers to practice age discrimination in evaluating older employees and in selecting employees for termination;

e. Failing to establish policies to ensure compliance with the requirements of ADEA, and to guard against age discrimination, including, without limitation, policies requiring proper training of supervisory employees;

f. Willfully failing to examine or evaluate, in advance of the completion of RIFs (or at any time thereafter), whether the RIFs routinely result in the elimination of a disproportionately high number of older workers, or to otherwise employ safeguards or exercise oversight of the RIF process to prevent or mitigate such discriminatory outcomes, in violation of ADEA, as well as PPG's own internal RIF policies;

g. Pressuring older workers to accept retirement packages which were identical to what was available to workers who were simply terminated, or forcing older workers to resign after fabricating poor performance reviews;

h. Failing and refusing to reinstate, retrain and/or relocate older employees into positions that matched their job qualifications which became available after their termination, and failing to notify them of such positions when they became available, in violation of PPG's written policies governing employees terminated in RIFs; and

i. Extracting from employees invalid and improper waivers of claims for liability which are part of its scheme to intimidate and discriminate against older workers and attempt to prevent them from asserting valid claims under ADEA arising from their terminations.

10. The above-described policies, patterns, practices, and omissions which adversely impact older employees constitute willful violations of ADEA. PPG arbitrarily and routinely employs such policies and practices systematically and continuously to discriminate against older workers and select them for termination, and replace them with younger workers, without any credible excuse or justification.

11. Plaintiffs also bring this class and collective action on behalf of themselves and all other present and former salaried employees similarly situated for PPG's violations 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" (the "ERISA Class Members," collectively with the ADEA Class Members, referred to hereinafter simply as the "Class Members").

JURISDICTION

12. This Court has jurisdiction over the federal question subject matter of this civil rights action 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).

13. This Court has personal jurisdiction over PPG because PPG systematically and continuously engages in substantial interstate commercial conduct and business activity within Pennsylvania and maintains its World Headquarters in Pennsylvania, and because the case arises out of PPG's unlawful conduct within this District.

14. Plaintiffs have complied with all conditions precedent to filing a suit under ADEA and ERISA.

15. The Representative Plaintiffs each filed charges of employment discrimination based on age against PPG with the Equal Opportunity Employment Commission ("EEOC"): Mr. Rupert filed on October 25, 2006; Ms. Austin filed on November 3, 2006; Mr. Campbell filed on November 8, 2006; Mr. Hunt filed on November 27, 2006; and Mr. Bittner filed on November 27, 2006.

16. More than 60 days have elapsed since the Representative Plaintiffs filed charges with the EEOC.

17. Each of the Representative Plaintiffs has received a Dismissal and Notice of Rights from the EEOC. Copies of these EEOC Notices are attached hereto as Exhibit A and are incorporated by reference as though fully set forth herein.

18. The Complaint was filed within 90 days of receipt of the first Dismissal and Notice of Rights issued by the EEOC to a Representative Plaintiff.

VENUE

19. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) and 29 U.S.C. § 1132(e)(2), as the unlawful employment acts and practices complained of by the Plaintiffs were committed or occurred, and continue to occur, within this District. Moreover, PPG maintains its World Headquarters in this District, and Representative Plaintiffs Rupert and Austin, as well as a large concentration of the Class Members, reside and/or worked for PPG in this District.

20. In addition, the unlawful employment policies and practices which are the subject of this action, were and are centrally implemented and/or controlled from PPG's World Headquarters in this District and nation-wide, and remain in effect in this District and nation-wide in continuous, systematic violation of the ADEA and ERISA.

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

FACTUAL BACKGROUND

General Allegations Regarding PPG's Discriminatory Conduct

22. Historically, PPG had 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, in the past, PPG had consistently treated its employees well and it came to be thought of as the type of stable employer where an individual could spend his or her entire career.

23. In or about 1997, when Raymond LeBoeuf became PPG's Chief Executive Officer and Chairman of the Board, PPG's longstanding corporate philosophy of commitment to its employees began to erode. Under LeBoeuf's leadership, PPG embarked upon an aggressive and short-sighted program of cost-cutting, "belt-tightening" and "efficiency improvement," which was driven by Senior Management's obsession with short-term quarterly economic projections and goals in order to increase Senior Management's compensation and the value of their stock options.

24. One of the primary methods of cost-cutting employed by PPG was an aggressive program of RIFs. Starting at the time of LeBoeuf's ascension, and continuing until the present, PPG has undergone hundreds of RIFs at various PPG facilities across the country in the name of cost-cutting and efficiency improvements.

25. PPG soon 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.

26. Under LeBoeuf's reign, members of Senior Management of PPG instilled a corporate-wide culture and mentality which devalued the contributions of older workers, in which the older employees were perceived as "not pulling their weight," and that an increasingly competitive business environment justified their removal and the retention of the cheaper and, allegedly, more aggressive younger employees.

27. Members of Senior Management of PPG also frequently remarked, in speeches and in communications with managers with responsibility for selecting employees for termination, that PPG was "saddled" with high pension liabilities, and suggested that it was a serious "problem," implicitly encouraging them to find ways to eliminate or reduce benefits to high pension beneficiaries.

28. The foregoing attitudes filtered down from upper management to the ranks of middle managers, who, with the tacit, if not the express, blessing of their superiors in Senior Management and under pressure to cut costs and pension liabilities, focused their attention on eliminating older employees.

29. Managers at PPG, although schooled to avoid documenting remarks which overtly displayed ageist stereotypes, in fact harbored such attitudes, which were occasionally revealed by such statements that the older workers "were not working at the same rate" or "energy level" as younger workers, or that workers "had become too old to promote."

30. This legacy of age discrimination has become institutionalized throughout the company, and PPG's decisions, policies and plans for termination of its employees have become infected by discrimination, resulting in the termination of a highly disproportionate number of older employees, whose job duties were routinely assumed by younger workers.

31. While cutting legions of older salaried workers during his nine-year tenure as CEO of PPG, Mr. LeBeouf's salary did not lag.[1] Over that time, he collected $18.1 million in salary, bonuses, and miscellaneous compensation, not including similarly exorbitant gains from his stock options, the exact value of which is presently unknown, but is projected to be as worth as much as $21.7 million in additional compensation.

32. Mechanisms which facilitated age discrimination at PPG varied, but certain practices became highly prevalent within the company, most frequently in the context of RIFs, which were conducted on a routine and systematic basis.

33. When PPG would conduct RIFs, it would 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 employee's position.

34. In many cases, the employees would specifically be told that their termination had nothing to do with the quality of their work or performance.

[1] However, during LeBouef's tenure at PPG, the company's *performance* did lag behind that of its competitors, further discrediting the proffered economic justification for the policies implemented under his leadership allowing for the systematic elimination of highly-talented and technically experienced older workers through RIF's and other means—policies that, aside from their illegality, are deeply questionable from a long-term economic and operational perspective, given that PPG historically prided itself on, and excelled in its performance based upon its superior level of innovation and the technical experience of its work-force.

35. In no cases were the employees told the true reason for their termination--that they had in fact been selected for termination by the application of a secret and highly subjective ranking system which purported to rate their performance, discussed more fully below, which resulted in disproportionate numbers of older workers being terminated.

PPG's Standardless and Highly Subjective Performance Evaluation System

36. In some cases, PPG would, in advance of the older employee's termination, engage in 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, as years of favorable performance reviews are followed by an abrupt and unexplained transition to poor or average reviews.

37. PPG adopted systems for evaluation of employees' performance in such a way as to permit highly subjective, standardless performance evaluations which allowed PPG to manipulate and distort its older workers' records of performance in order to create a pretext for terminating those workers.

38. Under its former evaluation system—the "S.M.A.R.T." rating system—employees were rated for performance under an objective numerical system. The "S.M.A.R.T" rating system employed readily understandable, numerical grades (1 to 3) for various relevant employment tasks, and indications of the relative importance of such tasks.

39. The "S.M.A.R.T." numerical evaluation system was jettisoned, and was replaced by an evaluation system—the Performance and Learning Plan System (the "P&LP System")—

which employed non-numerical, vague and subjective rating factors that were easily susceptible to manipulation. The P&LP System permitted managers to make standardless subjective evaluations which could easily facilitate and cloak discriminatory animus.

PPG's Highly Unreliable and Subjective Secret Ranking System for Selecting Employees for Termination in RIFs

40. As part of its RIF program, PPG adopted a secret system company-wide under which managers were supposed to rank employees on performance and compare them with one another, which was a complete departure from the normal performance evaluation process with which the employees were familiar. This secret system was used to select employees for termination in RIFs and was also highly subjective and easily susceptible to manipulation.

41. The secret ranking system was instituted by Senior Human Relations Management of PPG in an arbitrary manner for purposes of ranking employees to determine which employees should be terminated. The rating system was secretly employed by PPG managers to yield RIF ranking matrices, ranking the employees in alleged decisional units for purposes of selecting the lowest-ranking employees for termination.

42. The RIF ranking matrices were never shown or mentioned to the terminated employees.

43. Employees who were terminated were simply told that their position was being eliminated or that the company was restructuring, but were never told that they were selected for termination in a performance ranking comparing them to other employees. Remarkably, neither the existence of the RIF performance ranking system, nor their rankings, were disclosed to

employees, even at such time as they were terminated, despite the fact that the system was used to select them for termination. Many of these employees had distinguished records of achievement under the former "S.M.A.R.T." system, which were wholly ignored.

44. PPG's failure to inform the terminated employees of the existence or results of the ranking system used in RIFs to effect their terminations suggests discriminatory pretext.

45. The secret ranking system included five nebulous and overly broad classifications, including such categories as "making things happen," "working with people," and "making sound decisions," which collectively included over two-hundred component items. The employees were never informed of these component items nor were they given a chance to calibrate their performance accordingly.

46. PPG applied the unreliable and standardless ranking system uniformly to all types of employees and job classifications, and failed to conduct any validation studies to ensure that the system was a meaningful or reliable performance evaluation tool.

47. A validation study would have identified a distinct set of factors for each job, and weighed these factors appropriately to account for the fact that some factors may be more important than other factors (or not important at all) for certain jobs. Such a validation study was necessary to make such an elaborate and complex system reliable, as the more than 200 component factors cannot all have equal relevance and be equally applicable to employees in diverse jobs with diverse duties.

48. PPG conducted no reliability study for any of these rankings or RIF ranking matrices, and Managers at PPG were permitted to employ the secret system to develop the RIF

matrices and terminate older employees without any controls or supervision. PPG's clandestine ranking system used in RIFs was therefore standardless, and easily susceptible to manipulation.

49. Due to PPG's lack of controls or supervision, in many if not all cases, there was only a single rater for all employees ranked in a given alleged decisional unit. Hence, it could not be determined whether another rater would give similar scores to employees, and how the ratings would come out with another rater.

50. Under the tenure of George Krock, PPG's long-time Director of Human Resources and Chief EEO Compliance Officer, PPG cast a blind eye to the disproportionate effect of its RIF program on older workers. Despite a written policy requiring PPG to perform a "disparate impact analysis" when a RIF occurs, PPG has never conducted proper statistical analyses of the impact of its RIF program on older workers, and has neglected to perform a valid statistical analysis for a single RIF to determine whether age was a factor in the terminations.

51. Hence, PPG's secret and standardless system for ranking employees, coupled with its use of RIF rating matrices to select employees for termination, was inherently unreliable and invalid and, as uniformly applied by PPG, had the effect of terminating disproportionately high numbers of older employees in PPG's regularly occurring RIFs.

PPG's Standardized RIF Termination Sessions

52. Statements made by PPG at the RIF termination meetings were scripted by PPG Human Resources and were conducted in a uniform and standardized fashion. The script dictated that the employee be informed that PPG senior management had "announced plans that it may have to restructure" and that "your position has been eliminated and your employment is terminated effective today." The script omitted any mention of the clandestine evaluation and ranking process by which the employee was selected for termination.

53. According to PPG's RIF procedures, the PPG representative delivering the scripted RIF announcement was to advise the terminated employee that the decision was absolutely final, was to avoid any discussion of the fairness or propriety of the decision and was to immediately move into a discussion of the release of liability.

54. The script called for the employee to be immediately urged to execute a release of liability in exchange for receiving his or her severance and to be given a proposed release, and evaluate two complex options for severance.

55. Most employees who were subjected to this process were unable to effectively process the information regarding severance and the release urged upon them because they had just been told, in peremptory fashion, that their employment was being terminated immediately without any prior notice, many times after decades of uninterrupted service.

56. The RIF termination script conspicuously omitted any information about, or explanation of the Decisional Unit Matrix form that the employee was supposed to consider in evaluating whether or not to accept the release, as required under the Older Workers Benefit

Protection Act, ("OWBPA"), 29 U.S.C. §626(f). Instead, the employees were handed the form at the termination meeting, along with other documents without any explanation as to its meaning or context.

57. That procedure, as addressed more fully below, is in direct violation of OWBPA, thereby invalidating and rendering void the releases. These violations of OWBPA also constitute further independent evidence of discriminatory pretext as part of PPG's standardized internal policies, practices and procedures.

58. As the closing scenes in the script, the meeting would then be hurriedly concluded, as the PPG managers were instructed to give the employee a hand-shake and then "leave the room." The employee would next be asked by other personnel to sign a "Security Debriefing Statement," affirming that they had not stolen any PPG property, and an "Exit Checklist," verifying that the employee had surrendered his or her keys, photo identification, American Express card and like items. Once these documents were signed, the terminated employee was then to be escorted out the door by PPG security.

59. This grossly insensitive, humiliating and traumatizing RIF procedure was applied by PPG to its employees in a uniform and undeviating fashion, whether the employee had been with the company for 40 days or 40 years.

<u>PPG's Additional Methods of Disposal of Older Workers</u>

60. Aside from its well-orchestrated RIFs, PPG also employed a variety of other methods to get rid of older workers. If the older employee happened to be near retirement age, PPG would often couch its forced termination of the employee as an offer of a "retirement package." In fact, PPG's former HR Director and EEO Compliance Officer, George Krock, did not consider it a violation of PPG's policies for managers to routinely inquire of older employees regarding their plans for retirement. However, the proffered "retirement package" was substantially the same as or identical to what other terminated employees were being offered.

61. 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, which were largely fabricated and which were used as a lever to force retirement.

62. 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.

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

64. Over the years, as PPG became more sophisticated in its discriminatory practices, it learned to take steps to camouflage its unlawful conduct. As part of this scheme,

PPG would seldom immediately hire or promote a younger person to the position held by the terminated older employee. Typically, a different job title would be used and often the position was left unfilled for a period of time, with the job responsibilities simply distributed among existing employees. After sufficient time had passed to obscure the temporal connection between the termination and a younger employee's assumption of the position, PPG would then fill the position from which the older worker had been terminated.

65. 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 or her back to do the same work as a contract employee–without the benefits he or she had labored to accrue.

66. PPG's systemic 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, it appears that its systemic discriminating patterns and practices have been uniformly implemented in every corner of PPG's organization and in every PPG location in the United States.

67. During the decade throughout which it has been methodically terminating its older employees, PPG has refined its methods and techniques so as to facially appear not to run afoul of the various federal statutes designed to protect employees from discriminatory practices, while simultaneously engaging in the very conduct those statutes exist to prevent.

68. In fact, PPG has become extremely focused on its agenda of cost-cutting and eliminating older workers in order to meet short-term quarterly financial goals, to the detriment of the long-term competitiveness of its primary businesses.

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

PPG's Policies, Patterns and Practices Have Had a Disparate Impact on Older Workers Terminated in RIFs or Forced to Retire Early

70. In the alternative, even if PPG did not have a deliberate intent to specifically and intentionally target older workers to be the victims of RIFs, at a minimum, PPG did not take sufficient, if any, precautions to assure that standardless decision-making did not result in the RIFs having a disproportionate impact on older employees.

71. PPG did not have in place any program to train its supervisory personnel to ensure compliance with the requirements of the ADEA.

72. PPG did not have in place any effective policies governing compliance with the requirements of ADEA generally, nor in the context of RIFs specifically.

73. PPG managers and other supervisor personnel were allowed to function in a virtual vacuum as to the standards for prohibiting age discrimination.

74. Not only did PPG completely fail to educate its managers regarding age discrimination, and completely fail to train them to avoid discriminating against PPG's older employees, but PPG also failed to establish appropriate objective selection criteria for its RIF's,

which would have reduced the disparate impact on older employees, and instead relied upon the clandestine RIF rating system to rank employees and select them for termination, as above-described.

75. The absence of objective evaluation and ranking criteria resulted in individual RIF decisions being made subject to the whims of individual managers. Such subjective decision-making is inherently suspect, because of the ease with which it can not only foster, but also camouflage age discrimination.

76. PPG's practice of relying on subjective and unreliable criteria in conducting its RIFs caused those RIFs to be infected by discrimination.

77. The fact that PPG took no steps to avoid age discrimination, whether in terms of education, training or the establishment of objective ranking and termination criteria, not only resulted in, but virtually assured that the impact of its RIFs would fall disproportionately on the shoulders of its older employees.

PPG's Wrongful Scheme to Extract Waivers of ADEA Claims and Willful Non-Compliance with OWBPA Requirements for Enforceability of Waivers

78. In furtherance of its scheme to discriminate against older workers and attempt to prevent them from asserting valid claims arising from their terminations, PPG routinely required terminated older workers to execute purported waivers of ADEA claims as a condition to receiving their severance. PPG knew that most of its older employees could not afford to forgo severance, especially when they were terminated with no notice whatsoever, and given no time to plan for or seek out alternative employment. PPG's policies and practices concerning the waivers, which were uniformly applied, were further infected with an intent to discriminate against older workers.

79. However, in attempting to extract enforceable waivers from employees and carry out its campaign of intimidating and misinforming the employees about why they were being terminated, PPG willfully failed to comply with both the minimum stated requirements of OWBPA, which must be strictly interpreted, as well controlling regulations and interpretive authority, in the following particulars:

a. The waivers were an essential element of PPG's overall illegal scheme, consisting of patterns, practices and omissions which it has utilized to terminate older workers or force them into early retirement and prevent or discourage them from pursuing claims under ADEA, and are therefore void as a matter of law;

b. The waivers and related material required to be submitted to employees pursuant to 29 U.S.C.§ 626(f)(1) were not knowing and voluntary, because *inter alia,* they were not worded in a manner calculated to be understood by the average individual, as required by 29 U.S.C. § 626(f)(1), and are in fact, confusing and misleading; accordingly, PPG cannot carry its burden under 29 U.S.C. § 626(f)(3) of establishing that the waivers were knowing and voluntary;

c. It is PPG's practice to avoid any oral or written explanation of the context, purpose or meaning of the waivers and required information specified under 29 U.S.C. § 626(f)(1) that is supposed to assist the employee in making an informed judgment in accepting the waiver at such time as the employee is terminated;

d. Instead, at termination, the employee is simply handed a document entitled, "Decisional Unit Information," or "Decisional Unit Matrix" (a true and correct sample copy of one such form is attached hereto as Exhibit "B"), along with a number of other termination-related documents, which make no reference to waiver of potential age discrimination claims, and contains largely if not wholly incomprehensible data; however, PPG is aware that even relatively sophisticated employees cannot reasonably be expected to understand or reliably interpret the information supplied to them without such an explanation, since the information, standing alone, is not comprehensible in the format in which PPG supplies it;

e. The critical information concerning class units, eligibility factors, time limits, job titles and ages, which is statutorily required to be supplied to the employee under 29 U.S.C. § 626(f)(1), is submitted separately from the proposed waiver to workers who are being terminated, and is not adequately identified during the termination process as being linked to or related to the waiver; nor are the employees specifically advised that they should evaluate the information in deciding whether or not to accept the terms of the waiver;

f. PPG fails to supply terminated employees with ages, job titles or job categories and related information for earlier terminations, which were part of the terminations taking place in successive increments over time, as required pursuant to 29 C.F.R. § 1625.22(4)(vi);

g. PPG does not properly and correctly identify the proper decisional units and related information that must be disclosed; rather, the decisional units are manipulated to conceal discriminatory treatment of older workers, or the information relating to job titles, ages, job classifications, is misstated or improperly presented in various ways, including the following:

(i) PPG defined overly broad decisional units in certain cases, in order to disguise smaller sub-units of discrimination. PPG sometimes presented very small decisional units-to mask discrimination because it is much more difficult to perceive discrimination-when only very small numbers are involved. Thus, the information it provided to terminated employees was under-inclusive in some respects and over-inclusive in others;

(ii) When convenient to hide age discrimination, PPG would define its decisional units based on geographic criteria;

(iii) When it served PPG's goal of camouflaging age discrimination, PPG would define its decisional units on a facility-by-facility basis;

(iv) To suit its interests, PPG would also–for purposes of its disclosure to terminated employees–combine RIFs that were really discrete or would separate actual force reductions into multiple, fictitious RIFs, and omit to identify the actual decisional units.

h. The releases were also wholly improper, void and unenforceable under OWBPA because they purport to permit PPG to recover attorneys' fees and litigation costs in the event that a terminated employee seeks to commence an action under ADEA, which is prohibited by 29 C.F.R. § 1625.23(b);

i. The releases are also wholly improper, void and unenforceable under OWBPA because PPG fails to identify the actual factors and methodology used by it to decide who was subject to the termination, as described above; rather, PPG utilizes a clandestine evaluation system for RIFs, the whole existence of which it willfully conceals from employees who are terminated in order to secretively rank them against each other;

j. PPG's form release agreement confusingly provides both that: "Employee….explicitly waives the right to recover damages or other relief in any claim…alleging discrimination brought… through the Equal employment Opportunity Commission ('EEOC')" and that "Employee also understands that he/she does not waive the right to file a charge with the EEOC…"; such self-contradictory language creates further impediments to clarity of interpretation of the releases by employees and runs afoul of 29 U.S.C. § 626(f)(4), providing that "[n]o waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission";

k. PPG's form release agreement contains a covenant-not-to-sue, in addition to a waiver of claims, which, because they have the same legal effect, creates confusion, and automatically heightens the prospect of misunderstanding by the terminated employee, which has been found by the courts to further violate OWBPA.

80. The OWBPA requirements were intended by Congress to ensure that older employees are provided with information necessary to evaluate any potential ADEA claims before deciding to release them. PPG's conduct, as above-described, has utterly thwarted that purpose.

81. PPG's multiple and willful failures to comply with OWBPA and governing authority and regulations render the waivers by Members of the collective action void, invalid and unenforceable.

82. PPG's uniform patterns, practices and omissions regarding the waivers, and information required to be supplied to employees pursuant to OWBPA, further evidence PPG's discriminatory conduct and intent to discriminate against older workers in violation of ADEA.

Allegations Concerning Mr. Rupert

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

84. 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.

85. 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.

86. In that position, he was in charge of pricing 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.

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

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

89. During his tenure at PPG, Mr. Rupert was regularly commended by customers of PPG for his efforts on their behalf.

90. 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.”

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

92. Representative Plaintiff Rupert was fifty-seven years of age as of January 23, 2006.

93. 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.

94. Mr. Prazenica offered no reason for Mr. Rupert’s termination, other than the alleged “downsizing.” Mr. Rupert was not informed that he had been evaluated, ranked and selected for termination based upon a clandestine ranking system. However, he did tell Mr. Rupert that he had to vacate his office, immediately.

95. During this meeting, Mr. Rupert was given a document titled “Decisional Unit Information.” There was no explanation of this document offered and it was facially incomprehensible.

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

97. 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.

98. 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 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.

99. 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.

100. 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.

101. 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.

102. 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.

103. In the alternative, Mr. Rupert's termination was the direct result of PPG's policies, practices and omissions, as above-described, which have disparate impact on older employees, including without limitation, its subjective and standardless evaluation practices, and use of unreliable and invalid RIF ranking matrices, failure to establish ADEA compliance policies and training programs, and failure to properly credit the employees' historical performance and length of tenure with the company.

104. Even if PPG's RIF policies were not specifically intended to discriminate on the basis of the age of discharged employees, Mr. Rupert's termination is an example of the disparate impact of those policies on older employees.

105. 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 pay, holiday time, insurance benefits, and pension benefits in violation of 29 U.S.C. §1140.

Allegations Concerning Ms. Austin

106. 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.

107. 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.

108. 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.

109. 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.

110. 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.

111. 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.

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

113. 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.

114. 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.

115. 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 Prazenica, 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 PPG's prepared script, which PPG has since refused to provide to Ms. Austin. Ms. Austin was not informed that she had been evaluated, ranked and selected for termination based upon a clandestine ranking system.

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

117. In a remarkable display of insensitivity, Messrs. Jones and Prazenica 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.

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

119. During this meeting, Ms. Austin was also given a document titled “Decisional Unit Information.” There was no explanation of this document offered and it was facially incomprehensible.

120. 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.

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

122. 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.

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

124. 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.

125. 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.
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.

126. 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.

127. 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.

128. 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.

129. In the alternative, Ms. Austin's termination was the direct result of PPG's policies, practices and omissions, as above-described, which have disparate impact on older employees, including without limitation, its subjective and standardless evaluation practices, and use of unreliable and invalid RIF ranking matrices, and failure to establish ADEA compliance policies and training programs, and failure to properly credit the employees' historical performance and length of tenure with the company.

130. Even if PPG's RIF policies were not specifically intended to discriminate on the basis of the age of discharged employees, Ms. Austin's termination is an example of the disparate impact of those policies on older employees.

131. 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 pay, holiday time, insurance benefits, and pension benefits in violation of 29 U.S.C. §1140.

Allegations Concerning Mr. Campbell

132. 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.

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

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

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

136. 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.

137. 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.

138. Shortly thereafter, Mr. Shaffer suggested that Mr. Campbell consider retiring early and taking a termination package being offered to him by PPG. 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.

139. 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.

140. 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.

141. 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.

142. 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.

143. 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.

144. 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.

145. 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.

146. 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.

147. In the alternative, Mr. Campbell's termination was the direct result of PPG's policies, practices and omissions, as above-described, which have disparate impact on older employees, including without limitation, its subjective and standardless evaluation practices, and failure to establish ADEA compliance policies and training programs, and failure to properly credit the employees' historical performance and length of tenure with the company.

148. Even if PPG's policies, patterns and practices, were not specifically intended to discriminate on the basis of the age of discharged employees, Mr. Campbell's termination is an example of the disparate impact of those policies on older employees.

149. 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 pay, holiday time, insurance benefits, and pension benefits in violation of 29 U.S.C. §1140.

Allegations Concerning Mr. Hunt

150. 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.

151. 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.
After being promoted to Liaison for the 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 Lead Service Representative in Winnsboro, supervising up to seven people.

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

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

154. Within a year, PPG hired someone in his thirties 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.

155. 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.

156. 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.

157. 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.

158. 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. Mr. Hunt was not informed that he had been evaluated, ranked and selected for termination based upon a clandestine ranking system.

159. During this meeting, Mr. Hunt was given a document titled "Decisional Unit Information." There was no explanation of this document offered and it was facially incomprehensible.

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

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

162. 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.

163. 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.

164. 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.

165. 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.

166. In the alternative, Mr. Hunt's termination was the direct result of PPG's policies, practices and omissions, as above-described, which have disparate impact on older employees, including without limitation, its subjective and standardless evaluation practices, and use of unreliable and invalid RIF ranking matrices, and failure to establish ADEA compliance policies and training programs, and failure to properly credit the employees' historical performance and length of tenure with the company.

167. Even if PPG's policies, patterns and practices were not specifically intended to discriminate on the basis of the age of discharged employees, Mr. Hunt's termination is an example of the disparate impact of those policies on older employees.

168. 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 pay, holiday time, insurance benefits, and pension benefits in violation of 29 U.S.C. §1140.

<u>Allegations Concerning Mr. Bittner</u>

169. 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.

170. 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.

171. In 2000, Mr. Bittner moved back to the Allentown area, because that is 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.

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

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

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

175. 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.

176. 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. Mr. Bittner was not informed that he had been evaluated, ranked and selected for termination based upon a clandestine ranking system.

177. During this meeting, Mr. Bittner was given a document titled "Decisional Unit Information." There was no explanation of this document offered and it was facially incomprehensible.

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

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

180. 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.

181. 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.

182. 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.

183. 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.

184. In the alternative, Mr. Bittner's termination was the direct result of PPG's policies, practices and omissions, as above-described, which have disparate impact on older employees, including without limitation, its subjective and standardless evaluation practices, and use of unreliable and invalid RIF ranking matrices, and failure to establish ADEA compliance policies and training programs, and failure to properly credit the employees' historical performance and length of tenure with the company.

185. Even if PPG's policies, patterns and practices were not specifically intended to discriminate on the basis of the age of discharged employees, Mr. Bittner's termination is an example of the disparate impact of those policies on older employees.

186. 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 pay, holiday time, insurance benefits, and pension benefits in violation of 29 U.S.C. §1140.

CLASS AND COLLECTIVE ACTION ALLEGATIONS

187. The Representative 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 under ADEA pursuant to the Fair Labor Standards Act, ("FLSA") 29 U.S.C. § 216(b). Although the factual predicate underlying both the ERISA class action and the ADEA collective action is substantially the same, the standards and procedures for class actions and collective actions differ. Thus, the two procedures will be addressed separately in the following paragraphs.

Class Action Under ERISA

188. The Representative Plaintiffs have instituted this ERISA action against PPG for PPG's violation 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."

189. Through the implementation, application and continuation of PPG's unlawful employment practices, as previously described herein, including without limitation, the application of PPG's standardless performance evaluation system and its secretive utilization of RIF procedures and employee ranking systems, resulting in sham RIF "ranking matrices" used to select employees for termination, thereby cutting off and/or otherwise interfering with the rights and benefits of current and former PPG employees over the age of 40.

190. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Representative Plaintiffs bring this ERISA claim on behalf of themselves and 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; and all present salaried employees of PPG who are at least 40 years of age who are at risk of being terminated by PPG as a consequence of the application of PPG's unlawful employment practices (the "ERISA Class Members").

191. Numerosity - The ERISA Class Members are 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, the Representative Plaintiffs believe that there are at least hundreds of Class Members located throughout the United States. In many instances, the affected ERISA Class Members are unaware that they may have viable claims against PPG. The exact number and identity of the ERISA Class Members is properly determined through discovery.

192. Commonality - There is a well-defined community of interest in the questions of law and fact involved in this case. Multiple common questions of law and fact that affect the rights of each ERISA Class Member, include, but are not limited to the following:

a. Whether PPG's policies, practices, procedures, acts and omissions violated ERISA;

b. Whether Defendant owed duties to Class Members and the nature of the duties owed;

c. Whether the Representative Plaintiffs and the ERISA Class Members have sustained injury by reason of PPG's acts and omissions;

d. Whether the termination of an ERISA Class Member's employment by PPG interfered with his or her attainment of a pension benefit or a greater pension benefit;

193. Typicality - The Representative Plaintiffs' claims are typical of the claims of the ERISA Class, arising from the illegal termination by PPG of their employment, or the ongoing and prospective threat of termination. The Representative Plaintiffs and the ERISA Class Members suffered, or are at risk of suffering, similar harm as a result of PPG's unlawful and continuing policies, practices and omissions. Absent a class action, ERISA Class Members may not receive appropriate relief and will continue to suffer losses, and the violations of the law alleged herein will not be redressed. PPG has acted or refused to act on grounds generally applicable to the ERISA Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with the respect to the ERISA Class as a whole.

194. Adequacy of Representation – Representative Plaintiffs will assure the fair and adequate representation of all ERISA Class Members, and have no conflict with other ERISA Class Members in the maintenance of this action. Their interests in this action are antagonistic to the interests of PPG and they are committed to pursuing this action to successful conclusion. The Representative Plaintiffs are aware that they cannot settle this action without Court approval and will vigorously pursue the class and collective claims throughout the course of this litigation. The Representative Plaintiffs will also assure the fair and adequate representation of the ERISA Class by their retention of attorneys who are experienced in class actions. Counsel for the Representative Plaintiffs has agreed to pay all reasonable costs in this case contingent upon the outcome of this case.

195. A class action is a superior method to adjudicate this controversy, because the claims of the ERISA Class Members have a commonality of interests, 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.

196. A class action is a superior method to adjudicate this controversy, because the claims of the ERISA Class Members have a commonality of interests, 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.

197. Because many of the individual claims would be too small to justify individual actions by ERISA Class Members, most ERISA Class Members are unlikely to have any interest in individually controlling the prosecution of this case. Indeed, the likelihood that individual ERISA Class Members will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation. To the extent that certain individuals do desire to control the litigation, they can opt out of the Rule 23 Class.

198. The Representative Plaintiffs believe and therefore aver that there are no unusual legal or factual issues which would create manageability problems, and the Representative Plaintiffs' counsel anticipate no difficulty in the management of this case as a class or collective action.

Collective Action Under ADEA

199. The Representative Plaintiffs have instituted claims for disparate treatment and disparate impact pursuant to ADEA arising out of the previously described systemic practices engaged in by PPG to discriminate against its older work force in conducting RIFs and forced retirements, which practices and policies have been in place for approximately a decade and have been consistently and continuously applied by PPG since their inception and remain in force to date.

200. Pursuant to Section 216(b) of the FLSA, the Representative Plaintiffs bring this ADEA claim on behalf of themselves and 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; and all present salaried employees of PPG who are at least 40 years of age who are at risk of being terminated by PPG as a consequence of the application of PPG's unlawful employment practices (the "ADEA Class Members").

201. The Representative Plaintiffs and the ADEA Class Members are similarly situated in that they have either been the victims of, or, by virtue of PPG's continued application of the challenged policies, practices and procedures, are at risk of becoming the victims of PPG's discriminatory conduct because PPG has violated ADEA by:

a. Adopting and employing systems for evaluation of employees in such a way as to permit highly subjective, standardless performance evaluations which allowed PPG to manipulate and distort its older workers' records of performance in order to create a pretext for terminating older workers;

b. Secretively adopting and employing methods for evaluating, ranking and selecting employees for termination in its regular RIFs, which methods were highly subjective, unreliable, invalid, and served as mere pretext, resulting in the termination of disproportionately high numbers of older workers who were never informed of the sham criteria used to select them for termination;

c. Failing to exercise appropriate supervision or control over managers who select older workers for termination;

d. Maintaining a corporate culture which fosters and encourages pervasive ageist stereotypes and age-related animus, and which permits managers to practice age discrimination in evaluating older employees and in selecting employees for termination;

e. Failing to establish policies to ensure compliance with the requirements of ADEA, and to guard against age discrimination, including, without limitation, policies requiring proper training of supervisory employees;

f. Willfully failing to examine or evaluate in advance of the completion of RIFs (or at any time thereafter), to determine whether the RIFs routinely result in the elimination of a disproportionately high number of older workers, or to otherwise employ safeguards or exercise oversight of the RIF process to prevent or mitigate such discriminatory outcomes, in violation of ADEA as well as PPG’s own internal RIF policies;

g. Pressuring older workers to accept retirement packages which were identical to what was available to workers who were simply terminated, or forcing older workers to resign after fabricating poor performance reviews;

h. Failing and refusing to reinstate, retrain and/or relocate older employees into positions that matched their job qualifications which became available after their termination, and failing to notify them of such positions when they became available, in violation of PPG’s written policies governing employees terminated in RIFs; and

i. Extracting from employees waivers of claims for liability which are invalid and improper under OWBPA as part of PPG’s scheme to intimidate and discriminate against older workers and attempt to prevent them from asserting valid claims under ADEA arising from their terminations.

202. Under Section 216(b), ADEA Class Members must specifically opt-in to this collective action in order to be benefited or bound by the outcome. Thus, this Court need not make any inquiries beyond whether the Representative Plaintiffs and the ADEA Class Members are similarly situated.

COUNT I

Disparate Treatment Under the <u>Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq*</u>

203. Plaintiffs hereby repeat and incorporate by reference the allegations of Paragraphs 1 through 202 above as if fully set forth herein.

204. Each of the Representative Plaintiffs were members of a protected class at the time of their termination, ranging in age from 51 to 65.

205. Each of the Representative Plaintiffs were well-qualified for their positions with PPG and had a demonstrated and well-established record of success with the company prior to their terminations.

206. Each of the Representative plaintiffs suffered an adverse employment action when their employment was terminated by PPG (or in the case of Mr. Campbell, when he was forced into early retirement) and they were replaced by a younger employee. That adverse employment action occurred in each case under circumstances giving rise to an inference of age discrimination.

207. PPG's stated justifications for terminating the Representative Plaintiffs (and, in the case of Mr. Campbell, forcing him into early retirement) was a pretext for willful age-related discrimination.

208. The Representative Plaintiffs' ages were a motivating factor in their termination.

209. By terminating their employment (and in the case of Mr. Campbell, forcing him into early retirement), PPG discriminated against the Representative Plaintiffs in the terms and conditions of their employment on the basis of their ages, in violation of the ADEA, 29 U.S.C. § 621, *et seq*.

210. PPG has similarly discriminated against all ADEA Class Members in the terms and conditions of employment, on the basis of their age, in violation of ADEA.

211. As a consequence of the unlawful policy, pattern and practice, and unlawful conduct of PPG as described herein, Representative Plaintiffs and ADEA Class Members have suffered damages in the form of lost compensation and seek front-pay and back pay, attorneys' fees and costs, declaratory and injunctive relief, lost pension benefits and punitive damages.

COUNT II

Disparate Impact Under the
Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.*

212. Plaintiffs hereby repeat and incorporate by reference the allegations of Paragraphs 1 through 211 above as if fully set forth herein.

213. The Representative Plaintiffs are members of a protected class.

214. Each of the Representative Plaintiffs is well-qualified for their positions with PPG and had a demonstrated and well-established record of success with the company prior to their terminations.

215. Each of the Representative plaintiffs suffered an adverse employment action when his or her employment was terminated by PPG (or in the case of Mr. Campbell, when he was forced into early retirement) and they were replaced by a younger employee. That adverse employment action occurred in each case under circumstances giving rise to an inference of age discrimination.

216. The Representative Plaintiffs' ages were a motivating factor in their termination.

217. By terminating their employment (and in the case of Mr. Campbell, forcing him into early retirement), PPG discriminated against the Representative Plaintiffs in the terms and conditions of their employment on the basis of their ages, in violation of the ADEA, 29 U.S.C. § 621, *et seq*.

218. Even if PPG's above-described policies and practices have been facially neutral as to the age of discharged employees, they nonetheless have had a disparate impact on older employees. Even if its RIF and evaluation policies and practices were facially neutral, PPG has, in practice, favored younger employees and targeted older ones in deciding who would be terminated.

219. These practices include PPG's subjective and standardless evaluation practices, and secretive and inherently unfair use of undisclosed, unreliable and invalid RIF ranking

matrices, failure to establish ADEA compliance policies and training programs, and failure to properly credit the employees' historical performance and length of tenure with the company.

220. PPG has similarly terminated the employment of all other ADEA Class Members who are former employees in like fashion upon the basis of their age. PPG has engaged in the above-described patterns, practices and omissions that have had a disparate impact on the ADEA Class Members on the basis of their ages and which have resulted in their terminations or early retirements.

221. PPG's actions in terminating the Representative Plaintiffs' employment and the employment of other ADEA Class Members and in causing ADEA Class Members to retire early was in violation of and contrary to the provisions ADEA.

222. Class members who are present employees are at risk of being terminated as a consequence of the application of PPG's continuing policies, patterns and practices as described herein.

223. As a direct and proximate result of PPG's conduct, the Representative Plaintiffs and all other ADEA Class Members who are former employees have been deprived of their employment and have been damaged.

224. As a consequence of the unlawful policies, patterns and practices, and unlawful conduct of PPG as described herein, the Representative Plaintiffs and ADEA Class Members suffered damages in the form of lost compensation, and seek front-pay and back pay, attorneys' fees and costs, declaratory and injunctive relief, and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, the Representative Plaintiffs, on behalf of them selves and prospective members of this collective action, pray that this Court:

a. Enter a judgment declaring this action to be a collective action properly maintained pursuant to 29 U.S.C. §216(b), that the Representative Plaintiffs be designated as representatives of the ADEA Class, and that their counsel of record be designated as ADEA Class Counsel;

b. Enter a judgment declaring that PPG's patterns, practices and omissions, as above-described, in terminating the employment of, or forcing early retirement of, ADEA Class Members of the collective action who were 40 years of age or older at the time of their termination or forced retirement violates ADEA;

c. Enter a judgment declaring that PPG's extraction of purported releases in connection with the terminations of ADEA Class Members of the collective action are non-compliant with the requirements of OWBPA and controlling authority, and are invalid and unenforceable;

d. Issue a permanent prohibitory injunction ordering PPG and its officers, agents, employees and successors to cease and desist from the unfair discriminatory employment patterns, practices, policies and omissions complained of herein, which result in the termination or early retirement of employees forty-years of age or older;

e. Issue a permanent mandatory injunction requiring PPG to take such affirmative action as will effectuate the purposes of ADEA, including adopting employment practices in accord with ADEA's requirements;

f. Enter a judgment and award in favor of the Representative Plaintiffs and the ADEA Class Members, and against PPG for reasonable monetary damages, including back pay (plus interest or an appropriate inflation factor and an enhancement to offset any adverse tax consequences associated with lump sum receipt of back pay), front pay, benefits and all other damages owed to the Representative Plaintiffs and the ADEA Class Members, in an amount proven at trial, resulting from PPG's unlawful and discriminatory acts or omissions;

g. Enter a judgment and award in favor of each of the Representative Plaintiffs and each ADEA Class Member for the maximum statutory amount of liquidated damages available under ADEA;

h. Enter a judgment and award in favor of the Representative Plaintiffs and the ADEA Class for costs, including, but not limited to, reasonable attorney's fees, experts' fees, and other costs and expenses of this litigation;

i. Enter a judgment and award in favor of the Representative Plaintiffs and the ADEA Class for pre-judgment and post-judgment interest;

j. Award such other and further legal and equitable relief as may be found appropriate and as this Court may deem just and proper; and

k. Retain jurisdiction over this action until such time as it is satisfied that PPG has remedied the practices complained of and is determined to be in full compliance with the law.

COUNT III

PPG's Violation of Employee Retirement Income Security Act of 1974 as amended, 29 U.S.C. § 1001, *et seq*

225. Plaintiffs hereby repeat and incorporate by reference the allegations of Paragraphs 1 through 224 above as if fully set forth herein.

226. PPG 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*.

227. 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.

228. PPG employed the Representative Plaintiffs and the similarly situated ERISA Class Members on a full-time basis until their employment was abruptly terminated without

advance notice or cause. As such, the Representative Plaintiffs and ERISA Class Members are participants under the Plan.

229. As a consequence of the unlawful and abrupt termination of their employment, the Representative Plaintiffs and the similarly situated ERISA Class Members now have drastically reduced eligibility for retirement benefits under the Plan.

230. At the time of the involuntary termination of their employment, Representative Plaintiffs and the similarly situated ERISA Class Members were either vested participants in the Plan or would have become vested had their employment not been terminated by PPG.

231. 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."

232. If PPG had permitted the named Representative Plaintiffs and similarly situated ERISA Class Members that were already vested in the Plan to retire at the age of 66, their monthly pension benefits would have been calculated based upon a higher "final average monthly salary" and their pension benefit would have been greater.

233. If PPG had permitted similarly situated non-vested ERISA Class Members to retire at the age of 66, by the time they had reached that age, they would have been vested in the Plan.

234. PPG's discharges of the Representative Plaintiffs and similarly situated ERISA Class Members was, in whole or in part, motivated by the intent to reduce their pension benefits,

and by the specific intent of interfering with their attainment of the rights to which they would have become entitled under the Plan if they had been permitted to retire at age 66.

235. PPG's actions in terminating the Representative Plaintiffs' employment and the employment of other ERISA 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.

236. As a direct and proximate result of PPG's conduct, the Representative Plaintiffs and all other ERISA Class Members have been deprived of their employment and all rights and benefits to be derived therefrom and have 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 othe r similarly situated ERISA 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, that the Representative Plaintiffs be designated as representatives of the ADEA Class, and that their counsel of record be designated as ERISA Class Counsel;

b. 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;

c. Issue a permanent prohibitory injunction ordering PPG and its officers, agents, employees and successors to cease and desist from the unfair employment patterns, practices, policies and omissions complained of herein, which violate Section 510 of ERISA;

d. Issue a permanent mandatory injunction requiring PPG to take such affirmative action as will effectuate the purposes of ERISA, including adopting employment practices in accord with ERISA's requirements;

e. Enter a judgment and award in favor of the Representative Plaintiffs and the ERISA Class Members for the earnings and benefits lost by the Representative Plaintiffs and the ERISA Class Members resulting from the illegal termination of their employment by PPG;

f. Enter a judgment and award in favor of the Representative Plaintiffs and the ERISA Class for costs, including, but not limited to, reasonable attorney's fees, experts' fees, and other costs and expenses of this litigation;

g. Enter a judgment and award in favor of the Representative Plaintiffs and the ERISA Class for pre-judgment and post-judgment;

h. Award such other and further legal and equitable relief as may be found appropriate and as this Court may deem just and proper; and

i. Retain jurisdiction over this action until such time as it is satisfied that PPG has remedied the practices complained of and is determined to be in full compliance with the law.

JURY TRIAL DEMANDED ON ALL ISSUES SO TRIABLE

Respectfully submitted,

OBERMAYER REBMANN MAXWELL & HIPPEL LLP

Date: August 7, 2007

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Counsel for Plaintiffs, Arthur C. Rupert, Linda K. Austin, Larry L. Campbell, Kenneth J. Hunt, and Wade Bittner, individually and on behalf of all others similarly situated

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 7th day of August, 2007, *Plaintiffs First Amended Class and Collective Action Complaint* was served via ECF as follows:

Terrence H. Murphy, Esquire
Alan M. Pittler, Esquire
Lisa M. Passarello, Esquire
James F. Glunt, Esquire
BUCHANNAN INGERSOLL & ROONEY P.C.
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s/ Bruce C. Fox, Esquire

DECISIONAL UNIT INFORMATION

PPG is required to provide you with information on the class, unit, group, job classification or organizational unit (the "**Decisional Unit**") from whom it chose the persons who would be eligible to receive benefits under the PPG Industries, Inc. Salaried Severance Plan ("Severance Plan"). This information includes a list of the job titles and ages of all individuals in the Decisional Unit who are eligible or are selected to receive benefits under the Severance Plan, as well as a list of the individuals in the Decisional Unit who are not eligible or selected to receive benefits under the Severance Plan.

The Decisional Unit from which PPG chose the individuals to receive benefits under the Severance Plan is: General Industrial – Pricing

Decisional Unit Matrix

Job Title		Age	Eligibility
1.	Tech Svc Rep VI	35.3	No
2.	Tech Svc Supvr II	57.3	Yes

EXHIBIT

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