THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SHIRLEY WILLIAMS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 03-2200-JWL
	)	
SPRINT/UNITED MANAGEMENT COMPANY,	)	
	)	
Defendant.	)	

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff Shirley Williams, by and through counsel, and for her causes of action against Defendant Sprint/United Management Company, alleges and avers as follows:

GENERAL ALLEGATIONS

1. Plaintiff Shirley Williams (hereinafter "Plaintiff" or "Williams") is a 61-year-old citizen and resident of the State of Kansas.

2. Defendant Sprint/United Management Company (hereinafter "Defendant" or "Sprint") is a corporation which is currently in good standing and which is duly registered to do business in the State of Kansas and which was doing business in the State of Kansas at all times relevant to this lawsuit. Defendant may be served by and through its registered agent, Corporation Service Company, 200 S.W. 30th Street, Topeka, KS 66611.

3. This Court has jurisdiction over this action by virtue of 28 U.S.C. § 1331, in that it arises under the laws of the United States of America, namely, the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. and the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (b) by virtue of the fact that a substantial part of the events or omissions giving rise to the claims set forth herein occurred in the State of Kansas and that Defendant is registered to do and is doing business in the State of Kansas, subjecting it to personal jurisdiction in this action and making it a "resident" of this judicial district pursuant to 28 U.S.C. § 1391(c).

5. Defendant Sprint/United Management Company, constitutes, and constituted at all times relevant to this action, an "employer" as defined in 29 U.S.C. § 630(b) and 42 U.S.C. §§ 12111.

ALLEGATIONS SUPPORTING COLLECTIVE ACTION
(29 U.S.C. §§ 626(b) AND 216(b))

6. Beginning in the fourth quarter of 2001, and extending at least through the end of the first quarter of 2003, Sprint planned and implemented a several phases of a "reduction in force" ("RIF") purportedly intended to eliminate job functions and to reduce costs.

7. In connection with the RIF, Sprint engaged in a pattern or practice of age discrimination, in treating younger employees more favorably than older employees, including (but not limited to) some of the following specific actions:

a. Transferring younger employees (i.e., those under the age of 40) to "safe" positions before and during the RIF process;

b. Identifying certain younger employees (i.e., those under the age of 40) as "key talent" and taking extraordinary efforts to exempt them from the RIF;

c. Transferring older workers (i.e., those 40 years of age and older) to jobs or departments which were to be phased out or eliminated as part of a future reorganization;

d. Consciously deciding not to comply with the "Older Workers Benefit Protection Act ("OWBPA") for certain job grades, in order to avoid having to disclose demographic data and its "selection criteria" to those affected by the RIF;

e. Filling "open" positions within departments with younger employees (i.e., under the age of 40) just before the RIF, then terminating older workers (i.e., those 40 years of age and older) in the same or similar positions as part of the RIF;

f. Providing "spreadsheets" or "templates" to managers to use in making termination decisions, which spreadsheets or templates included, or were designed to include, improper factors such as age, date of birth, and other age-related criteria;

g. Providing hidden data links, within such spreadsheets and templates, that allowed managers to access improper criteria, such as age, date of birth, and other age related data, for use in making RIF decisions;

h. Setting up a "sham" process (through a company called Right Management Consultants) for displaced workers to "re-apply" for open positions with Sprint, resulting in situations where older applicants (i.e., those 40 years of age and older) were not given the same consideration as younger employees and were denied even the opportunity to interview for such open positions;

i. Continuing to hire new employees after the RIF that eliminated the positions of Plaintiffs and others similarly situated, with positions for which RIF'd employees were fully qualified;

j. Implementing a new "alpha rating" or "forced ranking" system in early 2002 which was secretly intended to provide justification for termination decisions to be made as

part of the RIF. With respect to this new performance rating system, Plaintiff alleges the following pertinent facts:

i. Through the end of 2001, most Sprint employees were given an overall performance rating on a scale of 1-5, with 1 being the highest and 5 being the lowest;

ii. The vast majority of Sprint employees evaluated through the end of 2001 received a rating of "3" under this method; a "3" rating signifies performance that "fully met" the employer's expectations;

iii. In late 2001, Sprint began discussing a new "alpha-rating" system which, among other features, would utilize the forced ranking method (using a "Bell curve" model) lionized by Jack Welch of GE to rate and compare employees;

iv. One of Sprint's intentions in adopting the new "alpha rating" system was to identify more "poor performers" within the organization;

v. Despite clear warnings from its own employees studying the new rating system before implementation that such a system "does not pretend to be objective," and could lead to increased claims of age discrimination, Sprint decided to move forward with the "alpha rating system" in early 2002;

vi. Under this new rating system, Sprint managers were directed to give a "shadow rating" to all exempt employees, even though their 2001 "numeric" ratings had already been determined;

vii. Sprint officially announced this new "alpha rating" system to employees in mid-February of 2002;

viii. Sprint employees were told ***in writing*** in early 2002 that the new alpha rating system "would not affect compensation" in 2002 and that alpha ratings given in 2002 "would not become a part of any employee's permanent record;"

ix. Nevertheless, in late February or early March of 2002, Sprint managers were expressly directed to use "shadow ratings" as one of the selection criteria for RIF decisions and, contrary to Sprint's express representations to employees, alpha ratings were recorded in various significant employee databases;

x. In other cases, Sprint managers made RIF decisions based upon the lower "alpha ratings" given to employees over the age of 40 who had previously received overall numeric ratings of "3" and above;

xi. The "shadow ratings" given to employees in 2002 were an important factor used in the selection process for the RIF that occurred in 2002 and 2003; and

xii. Sprint conducted an "after action review" of the new alpha rating system in the late Spring and early summer of 2002, which confirmed earlier warnings that the system would result in claims of age discrimination.

8. Although Sprint professed to determine the "impact" of actual and proposed job cuts upon various discrete groups of employees, including employees over the age of 40, Sprint has shielded such information from many of its employees, and from others outside the organization, under a claim of "attorney-client" privilege.

9. Nevertheless, data provided through Sprint's "human resource information system" (HRIS) confirms that, during various time frames relevant to this action:

a. Employees aged 40 and older have been ***more than twice as likely*** to be terminated

as part of a RIF at Sprint than employees under the age of 40;

b. Employees aged 40 and older, who had previously been rated in the highest categories (i.e., "1" and "2") under the numeric rating system were less likely to retain the highest ratings (i.e., "M" and "H") under the alpha rating system than were employees under the age of 40;

c. Employees aged 40 and older, who had previously been rated in the middle category (i.e., "3") under the numeric system, were more likely to be rated in the lower categories (i.e., "I" and S") under the alpha rating system than were employees under the age of 40.

10. Furthermore, Sprint's own "after action review" of the new alpha rating system confirmed that:

a. The system was subjective, arbitrary, non- substantive, dishonest, and inaccurate;

b. The system was biased against older (over age 40) workers; and,

c. The system was inequitable and inappropriate because of pool size and composition.

11. In addition to the foregoing facts, Plaintiffs are "similarly situated" in that:

a. All are over 40;

b. All were terminated by Sprint as part of a Reduction in Force that spans the relevant time frame October 1, 2001 through March 31, 2003;

c. All are identified by "Separation Code" 63 in Sprint's human resource information system, a database which was ordered to be produced to plaintiffs herein;

d. All were satisfactory (or better) performers just before the RIF;

e. All have the same retirement benefit plans — with the same age and service formulas;

f. All have the same medical (and other) benefits;

g. All were purportedly subject to the same "Displacement Guidelines" and standards;

h. All were subjected to a RIF overseen by Human Resource Sprint personnel, which department inadequately trained decision-makers with regard to age discrimination, and equal employment opportunity;

i. All were subjected to a RIF infected by Sprint management's culture of age-bias;

j. All exempt salaried employees had the same performance evaluation system in place at the particular time they were RIF'd;

k. For all persons over 40 who were RIF'd, younger persons were not RIF'd, despite having same or similar job duties or classifications;

l. Nearly all are exempt, salaried employees; and

m. Nearly all are job grades 71-79

ALLEGATIONS SPECIFIC TO PLAINTIFF SHIRLEY WILLIAMS

12. Plaintiff began her employment with Sprint in or about November of 1998 as an associate analyst.

13. Plaintiff worked for Sprint from November of 1998 to and including March 13, 2002.

14. During her employment with Sprint, Plaintiff performed her job duties satisfactorily, received numerous satisfactory performance appraisals and received periodic raises in pay.

15. In August of 1999, Plaintiff was promoted to the position of analyst.

16. In September of 2001, Williams received a satisfactory performance appraisal and was designated to receive a five (5) percent pay increase as a result of her job performance.

17. Shortly after this satisfactory performance appraisal, Williams learned that she had

been listed as a potential witness in a disability discrimination lawsuit brought by a former co-worker of Williams against Defendant.

18. On or about November 28, 2001, Plaintiff was interviewed by counsel representing Defendant in connection with the disability discrimination lawsuit brought by a former co-worker of Williams against Defendant.

19. During this interview, Williams disclosed information that was generally supportive of the former co-worker, and disclosed the existence of a memo she wrote to her supervisor, Lorrie McCurdy (who was also a supervisor of the person bringing the other legal action against Defendant).

20. Shortly after her participation in this interview with counsel for Defendant, Williams began to receive unwarranted negative comments about her work performance.

21. On at least two occasions after her participation in the interview with counsel for Defendant concerning the co-worker's legal action, Williams applied for analyst positions, but was denied these promotions (in favor of younger, less-qualified candidates).

22. Plaintiff applied for a senior analyst position in the Tables Department and was interviewed for this position on August 13, 2001; Plaintiff later learned that the senior analyst position was given to a much younger female, Annette Purdon (born in 1974), who had less experience with the company.

23. Plaintiff is personally aware of Sprint's practice of transferring employees to "safe" positions before implementing a reduction in force:

a. During both the Spring and the Fall of 2001, Plaintiff personally observed that several males under the age of 40 were transferred from various positions in her business unit to work on what was called the "Renaissance Billing Platform," a new billing system that Sprint was developing.

b. Upon information and belief, the employees who were transferred to work on "Renaissance Billing" in the Spring of 2001 were: Brent Daniel, Jay Thompson, Shelby Brown and Josh Haddad. All were under the age of 40 at the time.

c. Upon information and belief, the employees who were transferred to work on "Renaissance Billing" in the Fall of 2001 were: Scott Rutherford, Chris Pritchard, Rich Brackenhauf, Ryan Gaik and Brett Talcott. All were under the age of 40 at the time.

24. None of these employees who transferred to work on Renaissance Billing in 2001 were included in the reduction in force of March 13, 2002.

25. In February of 2002, a new "subjective" performance rating system was introduced and Williams was improperly given a low rating.

26. Specifically, in February of 2002, Plaintiff was given a rating of 4 on her 2001 LINK, and a "shadow rating" of "S" despite being told in her first interim and second interim reviews that her overall work performance met all expectations.

27. Sprint promoted two males under the age of 30 to the same position and job grade that Plaintiff held during the two-week period immediately before Plaintiff was terminated.

28. On or about March 1, 2002, two younger employees--Pat Paden (born in 1974) and Darin Collins (born in 1975)-- were promoted to analyst positions (Grade 73) in the Tables Department.

29. On March 13, 2002, Plaintiff was notified (along with another co-worker, Dawne Adams, also over the age of 40 and also a grade 73) that she was to be terminated in a "reduction in force." Ms. Adams and Plaintiff were the oldest analysts in their department, had the longest tenure in their department, and were the only two analysts terminated from their immediate work group on March 13, 2002.

30. Pat Paden and Darin Collins, who had been promoted to the same position and same

pay grade that plaintiff held just two weeks earlier, were not terminated on March 13, 2002.

31. Defendant discriminated against plaintiff on the basis of her age with respect to the terms and conditions of her employment, by denying her promotional opportunities, and by terminating her employment on March 13, 2002.

32. Upon plaintiff's termination, her position was filled by and/or her former job duties were assumed by one or more younger employees.

33. Plaintiff was treated less favorably than similarly situated younger employees in the layoff.

34. Plaintiff's age was a motivating and/or determining factor in the decision to terminate her employment.

35. Defendant's stated reasons for plaintiff's termination were a pretext for discrimination on the basis of her age.

36. Based upon defendant's discrimination against her, plaintiff filed a timely charge of age discrimination with the Equal Employment Opportunity Commission (EEOC) on or about May 21, 2002.

37. Plaintiff has received a notice of right to sue from the EEOC.

38. Plaintiff has fulfilled all conditions precedent to the filing of this action.

COUNT I--AGE DISCRIMINATION

39. Plaintiff Williams hereby incorporates by reference each and every allegation and averment in her General Allegations as though fully set forth herein.

40. Defendant Sprint discriminated against Plaintiff on the basis of her age in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 623.

41. Defendant Sprint, by and through its officers, employees and agents, engaged in a continuing pattern and practice of discrimination against or disparate treatment of Plaintiff based upon Plaintiff's age, denying Plaintiff opportunities for promotions and ultimately terminating Plaintiff.

42. As a direct and proximate result of the continuing pattern and practice of discrimination directed toward Plaintiff, or of the disparate treatment of Plaintiff, Plaintiff suffered actual damages in the form of lost wages, lost fringe benefits, loss of earning capacity, and in other respects, all in an amount yet to be determined, but not less than Seventy-Five Thousand Dollars ($75,000.00).

43. Defendant Sprint's actions were willful, entitling Plaintiff to liquidated damages in an amount equal to the actual damages referred to in the preceding paragraph.

44. Plaintiff has already incurred and will in the future incur substantial attorney's fees and expenses in prosecuting her claim of discrimination to which fees and expenses she is entitled pursuant 29 U.S.C. §§ 626(b) and 216(b).

WHEREFORE, Plaintiff respectfully prays judgment in her favor and against defendant Sprint/United Management Company in the form of the order of this Court: (1) permanently restraining defendant from ever again discriminating against Plaintiff or any other individual on the basis of that individual's age; (2) reinstating Plaintiff to her position with any promotions and pay increases she would have received in the interim; (3) awarding her back pay in an amount yet to be determined; (4) in the alternative to reinstatement, awarding her front pay in an amount yet to be determined; (5) awarding her lost fringe benefits in an amount yet to be determined; (6) awarding her liquidated damages in an amount equal to her actual damages; (7) awarding her the costs and

expenses, including attorney's and expert witness fees, incurred in prosecuting her claims of discrimination; (8) awarding her damages to offset unfavorable tax consequences of any award, including attorney's fees; and (9) awarding such other and further relief as the Court deems just and proper.

COUNT II–ADA RETALIATION

45. Plaintiff Williams hereby incorporates by reference each and every allegation and averment in her General Allegations and in Count I above as though fully set forth herein.

46. Defendant retaliated against Williams, in violation of 42 U.S.C. § 12203, after she "participated... in an investigation" by being interviewed by counsel for Defendant in connection with a disability discrimination lawsuit filed by a former co-worker, by (a) denying Williams promotions; (b) giving Williams an unfavorable performance appraisal; (c) targeting Williams for termination and/or layoff; and (d) terminating Williams on March 13, 2002.

47. Defendant's actions were intended to coerce, intimidate, threaten or interfere with the exercise or enjoyment by Williams of rights granted her and/or protected by the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. in violation of the provisions of 42 U.S.C. § 12203.

48. As a direct and proximate result of the continuing pattern and practice of retaliation directed toward her or disparate treatment of her and of Defendant's termination of her, Plaintiff has suffered actual damages in the form of lost wages, lost fringe benefits, loss of earning capacity, loss of career opportunity, costs of seeking alternate income, expenses incurred in obtaining alternate income, pain and suffering, future medical expense, mental anguish, emotional distress, loss of enjoyment of life, and in other respects, all in an amount yet to be

determined but not less than Seventy-Five Thousand Dollars ($75,000.00).

49. Defendant's actions were wilful, wanton, malicious and in reckless disregard of Williams' rights; were motivated by evil motive or reckless indifference to the harm that they might inflict upon Williams or amounted to gross negligence.

50. Williams has already incurred and will incur in the future substantial attorney's fees and expenses incurred in prosecuting this action, which fees and expenses are recoverable by virtue of 42 U.S.C. §§12117(a) and 12205, and 42 U.S.C. § 2000e-5(k).

WHEREFORE, Plaintiff respectfully prays judgment in her favor and against Defendant, in the form of the Order of this Court: (1) permanently restraining Defendant from ever again retaliating against Plaintiff or any other individual, for engaging in protected activity under the Americans with Disabilities Act; (2) reinstating Plaintiff to her former position; (3) awarding her back pay in an amount yet to be determined, but not less than Seventy-Five Thousand Dollars ($75,000.00); (4) in the alternative to reinstatement, awarding her front pay in an amount yet to be determined; (5) awarding her lost fringe benefits in an amount yet to be determined; (6) awarding her compensation for physical injury, pain and suffering, future medical, mental anguish, emotional distress, loss of enjoyment of life, and other categories of actual damage, each in an amount yet to be determined but not less than Seventy-Five Thousand Dollars ($75,000.00); (7) awarding her punitive damages in the amount of $1,000,000.00 (One Million Dollars) or such other amount as a jury may deem appropriate; (8) awarding her reasonable costs, including expenses and attorneys fees; (9) awarding her damages to offset unfavorable tax consequences of any award, including attorney's fees; and (10) awarding her such other and further relief as the Court deems just and proper.

COUNT III-ADEA COLLECTIVE ACTION

51. Plaintiff Williams hereby incorporates by reference each and every allegation and averment in her General Allegations above as though fully set forth herein.

52. Cumulatively or in the alternative, Defendant engaged in a pattern and practice of discrimination against Plaintiff and others similarly situated in the respects specified in Count I in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 623 et seq.

53. Plaintiff's charge of discrimination filed with the EEOC asserted claims on behalf of herself and others similarly situated.

54. As a direct and proximate result of the continuing pattern and practice of discrimination and/or disparate treatment of Plaintiff and others similarly situated, Plaintiff and others similarly situated have suffered actual damages in the form of lost wages, lost fringe benefits, loss of earning capacity, loss of career opportunity, costs of seeking alternate income, expenses incurred in obtaining alternate income, and in other respects, all in an amount yet to be determined but not less than Seventy-Five Thousand Dollars ($75,000.00).

55. Defendant's actions were wilful, wanton, malicious and in reckless disregard of Plaintiff's rights and those of others similarly situated.

56. Plaintiff has already incurred and will incur in the future substantial attorney's fees and expenses incurred in prosecuting this action, which fees and expenses are recoverable by virtue of 29 U.S.C. §§ 626(b) and 216(b).

WHEREFORE, Plaintiff respectfully prays judgment in her favor and against Defendant, in the form of the Order of this Court: (1) permanently restraining defendant Sprint/United Management Company from ever again discriminating against Plaintiff or any

other individual on the basis of that individual's age; (2) reinstating Plaintiff and others similarly situated to their former positions; (3) awarding Plaintiff and others similarly situated back pay in an amount yet to be determined, but not less than Seventy-Five Thousand Dollars ($75,000.00); (4) in the alternative to reinstatement, awarding Plaintiff and others similarly situated front pay in an amount yet to be determined; (5) awarding Plaintiff and others similarly situated lost fringe benefits in an amount yet to be determined; (6) awarding Plaintiff and others similarly situated liquidated damages in an amount equal to their actual damages; (7) awarding Plaintiff and others similarly situated their reasonable costs, including expenses and attorneys fees; (8) awarding Plaintiff and others damages to offset unfavorable tax consequences of any award, including attorney's fees and (9) awarding Plaintiff and others similarly situated such other and further relief as the Court deems just and proper.

Respectfully submitted,

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DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury of all issues so triable as a matter of right.

/s/ Dennis E. Egan
Attorney for Plaintiffs

DESIGNATION OF PLACE OF TRIAL

Plaintiff designates Kansas City, Kansas as the place where this case should be tried.

/s/ Dennis E. Egan
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically and notice of such filing was made electronically to defendant's counsel pursuant to the Electronic Case Filing Rules of the United States District Court for the District of Kansas on July 2, 2004:

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