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Attorneys for Plaintiff

EUGEN SCHENFELD.	:	SUPERIOR COURT OF NEW JERSEY
	:	MIDDLESEX COUNTY
Plaintiff,	:	LAW DIVISION
	:	DOCKET NO:
Vs.	:	
INTERNATIONAL BUSINESS	:	<u>CIVIL ACTION</u>
MACHINES (IBM), JOHN KELLY,	:	
ZACHARY M. LEMNIOS,	:	
LARRY O’CONNELL,	:	COMPLAINT, JURY DEMAND,
JOHN DOES 1 – 10 (said names	:	DESIGNATION OF TRIAL COUNSEL
being fictitious) and ABC	:	
CORPORATIONS 1-10	:	
(said corporations being fictitious)	:	
	:	
Defendants.	:	

Plaintiff, *Eugen Schenfeld*, residing at 28 Essex Drive, in the Township of So. Brunswick, County of Middlesex and State of New Jersey, by way of Complaint, says:

FIRST COUNT

1. The plaintiff, *Eugen Schenfeld*, was hired by the defendant, *International Business Machines*, (hereinafter referred to as “IBM”) on or about September of 1998 as a Research Staff Member (RSM). The plaintiff worked continuously for the defendants, *IBM*, in various positions and capacities up until the date of his termination on or about June 27, 2018 when he was employed as a Research Staff Member (RSM).

2. The plaintiff was born on May 18, 1958 and was 60 years of age at the time his

employment was terminated on June 27, 2018.

3. The defendant, *IBM*, is a technology company doing business in various locations in the United States, and the State of New Jersey including an office located in Piscataway Township.

4. The defendant, *John Kelly*, was a Senior Vice President, Cognitive Solutions and *IBM* Research for the defendants, *IBM*, and was a Manager and/or Supervisor of some aspects of the plaintiff's employment at the time of the plaintiff's termination.

5. The defendant, *Zachary M. Lemnios*, was a Vice President, Physical Science and Government Programs, and was a Manager and/or Supervisor of some aspects of the plaintiff's employment at the time of the plaintiff's termination.

6. The defendant, *Larry O'Connell*, a New Jersey resident, was the *IBM* Senior Location Executive, in charge of central and southern New Jersey and was a Manager and/or Supervisor of some aspects of the plaintiff's employment at the time of the plaintiff's termination.

7. The defendants, *John Does 1 – 10*, New Jersey residents, are yet unknown and to be discovered employees of the defendants, *IBM*, and participated in, encouraged, aided, and/or otherwise assisted the organization and structuring of the decision making processes concerning the defendants' reduction in force, and the decision to terminate the plaintiff's employment.

8. On or about March 29, 2018 the plaintiff was employed by the defendants as a Research Staff Member (RSM), working from his home office in New Jersey and/or from the defendants' Piscataway, New Jersey location.

9. On or about March 29, 2018 the plaintiff was advised that the defendants *IBM* would be engaging in a reorganization of *IBM's* business and that the plaintiff had been selected

for a permanent layoff. The plaintiff was further advised that his last day of employment with the defendants, *IBM*, would be June 27, 2018.

10. The plaintiff was among numerous employees selected for the defendants, *IBM*'s reduction in force as a result of intentional and deliberate decisions to begin heavily recruiting and hiring younger employees while at the same time systematically phasing out and/or terminating older employees.

11. When the plaintiff learned that he had been selected for the defendants' reduction in force, he filed an administrative appeal challenging this decision, specifically alleging that the decision to terminate his employment was based on unlawful age discrimination.

12. When the plaintiff learned that he had been selected for the defendants' reduction in force, he researched open positions and other job opportunities with *IBM* throughout the United States, including open positions in Piscataway, New Jersey which he was fully qualified and capable of performing, and made various attempts to apply for available positions, and further advised the defendants he was interested in open job opportunities and wanted to remain employed with *IBM*.

13. The defendants failed to complete a full and proper investigation of the plaintiff's complaint and did otherwise wrongfully and unlawfully and based in whole or part on unlawful age discrimination affirm the decision to terminate the plaintiff's employment, and did otherwise prohibit the plaintiff from seeking other employment opportunities with the defendants, *IBM*.

14. The individual defendants, *John Kelly, Zachary M. Lemnios and Larry O'Connell*, along with other employees of the defendants, *IBM*, did meet with other *IBM* employees, plan, organize, coordinate and otherwise facilitate and participate in the decision making process, as well as the organization of the defendants' reduction in force as this decision

making process affected the plaintiff's employment.

15. The defendants, *IBM, John Kelly, Zachary M. Lemnios, Larry O'Connell, John Does 1 – 10 and ABC Corporations 1 – 10*, did engage in activities to advance a reduction in force that was designed in part to reduce a number of employees currently employed by the defendants, *IBM*, and working at various *IBM* worksites and/or locations including work sites and employees based in the State of New Jersey including the plaintiff's worksite in Piscataway, New Jersey and replace the employees with younger workers.

16. The defendants, *IBM, John Kelly, Zachary M. Lemnios, Larry O'Connell, John Does 1 – 10 and ABC Corporations 1 – 10* assisted and participated in the organization and structuring of this layoff and/or reduction in force, and had obligations to accurately report information concerning the termination of employee to various government entities with oversight of the defendants, *IBM's* operations including *IBM's* New Jersey operations.

17. The plaintiff at all times relevant hereto was performing his position as a Research Staff Member (RSM) in a competent professional manner, meeting and exceeding the legitimate expectations of his employer.

18. The defendants, *IBM*, engaged in a pattern and practice including at its Piscataway, New Jersey location and as it effected *IBM* employees in New Jersey, in determining which employees would be subjected to a reduction in force based upon unlawful discriminatory concerns regarding the employee's age and did engage in other actions to facilitate this unlawful and adverse employment action in violation of the *New Jersey Law Against Discrimination N.J.S.A. 10:5-1 et seq.*

19. The decision to terminate the plaintiff's employment and the actions of the defendants was made in whole or part based upon unlawful discrimination concerning the

plaintiff's age and/or unlawful perceptions concerning the plaintiff's age in violation of the *New Jersey Law Against Discrimination N.J.S.A. 10:5-1 et seq.*

20. As a direct and proximate result of the unlawful discriminatory conduct on the part of the defendants, the plaintiff suffered damages including economic damages, personal hardship, physical and emotional distress, severe emotional trauma and anxiety caused by the actions on the part of the defendants.

WHEREFORE the plaintiff demands judgment as follows: (a) ordering defendants to reinstate the plaintiff with full back pay and benefits; (b) compensatory damages; (c) punitive damages; (d) damages including personal hardship, economic loss, physical and emotional stress, severe emotional trauma and anxiety caused by the uncertainty of this employment controversy, family and social disruption and other personal injuries; (e) costs and attorneys fees; (f) an order declaring the defendants have violated the New Jersey Law Against Discrimination and requiring them to take appropriate corrective action to end discrimination in the work place; and (g) for any other relief as the Court may deem equitable and just.

SECOND COUNT

1. The plaintiff, *Eugen Schenfeld*, repeats each and every allegation of the First Count and Second Count as if more fully set forth herein at length.

2. The plaintiff, *Eugen Schenfeld*, was at all times relevant hereto fully experienced and capable of working for the defendants, *IBM*, in various capacities and/or positions.

3. The defendants, *IBM*, and the individual defendants, *John Kelly*, *Zachary J. Lemnios*, *Larry O'Connell* and *John Does 1 – 10* were actively engaged in recruiting and hiring younger employees at the same time the plaintiff and other older employees were selected for the defendants' reduction in force.

4. The plaintiff identified and attempted to apply for open positions with the defendants, *IBM*, throughout the United States and in New Jersey for which he was fully capable and/or qualified based upon his education, training and experience working with the defendants.

5. The plaintiff contacted various individuals employed by the defendants, *IBM*, including *John Kelly*, Senior Vice President, and *Larry O'Connell*, the *IBM* Senior Location Executive, in charge of central and southern New Jersey seeking open positions working for the defendants, *IBM*.

6. When the defendants selected the plaintiff for their reduction in force, and terminated his employment, the plaintiff was designated by the defendants as an employee not subject to rehiring based upon his age; effectively blocking him from future employment with *IBM*.

7. The plaintiff was not considered, and not hired into any open positions for which he was qualified by the defendants, *IBM*.

8. The defendants at the same time the plaintiff was seeking employment with *IBM*, actively recruited and hired younger individuals for positions the plaintiff was capable of fulfilling including open positions which the plaintiff could perform in New Jersey and at other *IBM* locations.

9. The defendants' refusal to hire the plaintiff into open positions for which he was qualified was based in whole or part on unlawful discrimination against the plaintiff concerning the plaintiff's age. The conduct and practices on the part of the defendants was in direct violation of the *New Jersey Law Against Discrimination N.J.S.A. 10:5-1 et seq.* in that the defendants improperly considered the plaintiff's age in making a decision not to hire the plaintiff.

10. As a direct and proximate result of the unlawful discriminatory conduct on the part of the defendants, the plaintiff suffered damages including economic damages, personal hardship, physical and emotional distress, severe emotional trauma and anxiety caused by the actions on the part of the defendants.

WHEREFORE the plaintiff demands judgment as follows: (a) ordering defendants to reinstate the plaintiff with full back pay and benefits; (b) compensatory damages; (c) punitive damages; (d) damages including personal hardship, economic loss, physical and emotional stress, severe emotional trauma and anxiety caused by the uncertainty of this employment controversy, family and social disruption and other personal injuries; (e) costs and attorneys fees; (f) an order declaring the defendants have violated the New Jersey Law Against Discrimination and requiring them to take appropriate corrective action to end discrimination in the work place; and (g) for any other relief as the Court may deem equitable and just.

THIRD COUNT

1. The plaintiff, *Eugen Schenfeld*, repeats each and every allegation of the First Count and Second Count as if more fully set forth herein at length.

2. The individual defendants, *John Kelly, Zachary J. Lemnios, and Larry O'Connell*, along with other yet unknown and undiscovered individuals employed by the defendants, *John Does 1 – 10*, were at all times relevant hereto Directors, Managers and/or Supervisors of the plaintiff's employment with the defendants, and/or directly involved with the management, oversight and/or Human Resources process involved in the selection of employees chosen for the defendants reduction in force, and played a role in assisting, aiding, abetting, conspiring with, and otherwise encouraging and participating in unlawful discriminatory practices directed at the plaintiff based upon his age including the termination of the plaintiff's employment and the

refusal to hire the plaintiff based on unlawful age discrimination.

3. The individual defendants engaged in a pattern and practice and otherwise participated in the organization, structuring and operations of this reduction in force to further advance the business objectives of the defendants, *IBM*, to terminate older employees and replace their employees with younger workers.

4. The individual defendants were at all times fully aware of the unlawful and discriminatory employment practices on the part of the defendants and continued to aid, assist, coordinate and otherwise participate in the coordination and operations of the reduction in force to advance the defendants' discriminatory objectives and to actively assist in the cover-up the discriminatory actions of the defendants to terminate older employees and replace them with younger workers including the employment of the plaintiff .

5. The actions and practices on the part of the defendants were unlawful and a direct violation of the *New Jersey Law Against Discrimination N.J.S.A. 10:5-12(e)*.

WHEREFORE the plaintiff demands judgment as follows: (a) ordering defendants to reinstate the plaintiff with full back pay and benefits; (b) compensatory damages; (c) punitive damages; (d) damages including personal hardship, economic loss, physical and emotional stress, severe emotional trauma and anxiety caused by the uncertainty of this employment controversy, family and social disruption and other personal injuries; (e) costs and attorneys fees; (f) an order declaring the defendants have violated the New Jersey Law Against Discrimination and requiring them to take appropriate corrective action to end discrimination in the work place; and (g) for any other relief as the Court may deem equitable and just.

FOURTH COUNT

1. Plaintiff repeats and reiterates each and every allegation of the First Count, and Second Count and Third Counts and incorporates same as if fully set forth herein at length.

2. Defendants *ABC Corporations 1-10* are to date unknown and/or undiscovered entities including private organizations as well as any public or quasi-public bodies and/or organizations yet to be discerned who were employers of the plaintiff.

3. Defendants *John Does 1-20* are to date unknown and/or undiscovered individuals including both private organizations as well any public or quasi-public bodies and/or organizations yet to be discerned who were employees of the defendant.

4. *ABC Corporations 1-10 and John Does 1-20*, through their agents, servants and/or employees did act to intentionally harm the plaintiff, *Eugen Schenfeld*, by wrongfully terminating his employment with the defendant, *IBM*, in violation of the *Law Against Discrimination, N.J.S.A. 10:5-1, et seq.*

WHEREFORE, the plaintiff demands judgment as follows: (a) ordering defendants to reinstate the plaintiff with full back pay and benefits; (b) compensatory damages; (c) punitive damages; (d) damages including personal hardship, economic loss, physical and emotional stress, severe emotional trauma and anxiety caused by the uncertainty of this employment controversy, family and social disruption and other personal injuries; (e) costs and attorneys fees; (f) an order declaring the defendants have violated the New Jersey Law Against Discrimination and requiring them to take appropriate corrective action to end discrimination in the work place; and (g) for any other relief as the Court may deem equitable and just.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury as to all issues so triable.

DESIGNATION OF TRIAL COUNSEL

STEVEN D. CAHN, Esq., is hereby designated as trial counsel for the Plaintiff in the within matter.

CERTIFICATION

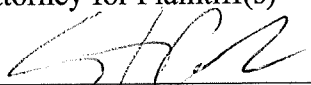
I certify that the matter in controversy is not the subject of any other action or arbitration proceeding I am aware of now or contemplated within New Jersey.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

CAHN & PARRA
Attorney for Plaintiff(s)

Date: November 13, 2018

By:



STEVEN D. CAHN, ESQ.