

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

RICHARD M. VILLARREAL, on
behalf of himself and all others
similarly situated,

Plaintiff,

v.

R.J. REYNOLDS TOBACCO
COMPANY; PINSTRIPE, INC.; and
CAREERBUILDER, LLC,

Defendants.

Civil Action No. 2:12-CV-0138

**COMPLAINT AND
JURY DEMAND**

(Collective Action)

**COMPLAINT FOR AGE DISCRIMINATION UNDER
THE AGE DISCRIMINATION IN EMPLOYMENT ACT**

Plaintiff Richard M. Villarreal (“Plaintiff” or “Mr. Villarreal”), on behalf of himself and all others similarly situated, by and through his undersigned counsel, files this collective action Complaint and Jury Demand (the “Complaint”) against Defendants R.J. Reynolds Tobacco Company; Pinstripe, Inc.; and CareerBuilder, LLC, (collectively, “Defendants”). The following allegations are based on personal knowledge as to Plaintiff’s own conduct and on information and belief as to the acts of others.

INTRODUCTION

1. This is a collective action challenging Defendants' repeated acts of unlawful age discrimination with respect to the hiring of individuals to fill regional sales positions. Since at least September 1, 2007 and perhaps earlier, Defendant R.J. Reynolds Tobacco Company ("RJ Reynolds"), with the assistance of Defendants Pinstripe, Inc. ("Pinstripe") and CareerBuilder, LLC ("CareerBuilder"), has hired over a thousand individuals to fill its "Territory Manager/Sales Representative/Trade Marketing" positions ("Territory Managers") throughout the United States. In doing so, Defendants followed policies established by RJ Reynolds that expressly instructed recruiters to reject candidates with eight years or more of sales experience and to target candidates two to three years out of college. RJ Reynolds understood and intended that these policies would result in the rejection of candidates 40 years of age or older. Pursuant to those policies, almost all of the individuals hired for the Territory Manager position were 39 years of age or younger, and many hundreds, if not thousands, of qualified persons 40 years of age and over were rejected on the basis of their age alone.

2. Defendants engaged in a pattern or practice of intentionally discriminating against qualified applicants age 40 or over on the basis of their age,

and they also applied employment policies and practices that, although not expressly directed at age, had a disparate impact on qualified applicants over the age of 40, in violation of the federal Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* (“ADEA”).

3. Plaintiff Richard M. Villarreal, whose applications for the Territory Manager position were repeatedly rejected due to his age, brings this action on his own behalf and on behalf of all other similarly situated applicants for the Territory Manager position. Mr. Villarreal seeks a declaration that Defendants’ hiring policies and/or practices violate the ADEA; an injunction prohibiting Defendants from discriminating against applicants over the age of 40 in the future and requiring Defendants to remedy the effects of their past discrimination; and damages for himself and for all similarly situated applicants who opt into this action pursuant to 29 U.S.C. § 216(b).

PARTIES

4. Plaintiff Richard M. Villarreal is a 55-year-old resident of Cumming, Georgia, who applied for a Territory Manager position with RJ Reynolds on six separate occasions between November 8, 2007 and April 2012. Cumming is located in the Gainesville Division (“this Division”) of this District.

Mr. Villarreal's applications for the Territory Manager position were rejected each time he applied.

5. Defendant RJ Reynolds Tobacco Company is a tobacco company with approximately 4,800 employees. It is headquartered in Winston-Salem, North Carolina, and incorporated in North Carolina. RJ Reynolds markets and sells its tobacco products in all fifty states, including within this Division, and engages in recruiting activities in all fifty states, including within this Division.

6. Defendant Pinstripe, Inc. is a recruiting services company and employment agency. Pinstripe regularly procures employees for employers engaged in interstate commerce and employs twenty or more employees. Its principal office is located in Brookfield, Wisconsin, and it is incorporated in Wisconsin. Pinstripe provides recruiting services in all fifty states, including within this Division.

7. Defendant CareerBuilder, LLC is a recruiting services company and employment agency. CareerBuilder regularly procures employees for employers engaged in interstate commerce and employs twenty or more employees. Its principal office is located in Chicago, Illinois, and it is incorporated in Delaware. CareerBuilder provides recruiting services in all fifty states, including within this Division.

JURISDICTION AND VENUE

8. Because this case is brought under the ADEA, 29 U.S.C. § 621 *et seq.*, this Court has federal question jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(4).

9. Venue is proper in this District because a substantial part of the events and omissions giving rise to the claims in this case occurred in this District, and because each of the Defendants is subject to personal jurisdiction in this District by virtue of its substantial, continuous, and systematic commercial activities in this District. *See* 28 U.S.C. § 1391(b), (c). Venue is proper in this Division because all Defendants are subject to personal jurisdiction in this Division and, thus, “reside” in this Division for venue purposes (*see* LR, NDGa 3.1(B)(1); 28 U.S.C. § 1391(c)); and because this cause of action arose within this Division (*see* LR, NDGa 3.1(B)(3)).

FACTS

10. Since at least September 1, 2007, RJ Reynolds, with the assistance of the other Defendants, has actively recruited and hired individuals to fill Territory Manager positions within RJ Reynolds. Territory Managers are assigned to a specific geographic territory and are responsible for working with traditional and non-traditional retailers in that territory to increase sales of RJ Reynolds’s tobacco

products and to build RJ Reynolds's brands. Territory Managers also market RJ Reynolds's products directly to consumers through "one-to-one" engagements designed to convert consumers to RJ Reynolds's tobacco products. Being of a certain age is not a *bona fide* occupational qualification reasonably necessary for the Territory Manager position.

11. On November 8, 2007, Mr. Villarreal applied for a Territory Manager position with RJ Reynolds. Mr. Villarreal learned of the vacancy on a website maintained by CareerBuilder, which directed him to a website maintained by RJ Reynolds. On that website, Mr. Villarreal completed a questionnaire; uploaded his resume; and submitted his application. He also indicated his desire to be notified of future job openings that matched his website profile. At the time, Mr. Villarreal was 49 years old. Mr. Villarreal resided in Cumming, Georgia, when he learned of the opening and applied for the position.

12. Mr. Villarreal was never contacted by any of the Defendants regarding his November 8, 2007 application, and he was never offered the Territory Manager position.

13. Kelly Services, Inc. ("Kelly Services"), a recruiting and staffing company and employment agency, through its subdivision Kelly HRFirst, assisted RJ Reynolds in recruiting and screening applications for the Territory Manager

position in 2007 and 2008, and was doing so when Mr. Villarreal first applied for the position. Kelly Services screened all of the applications for the position that RJ Reynolds received during that time period, including Mr. Villarreal's application, and it determined which applicants should be rejected based on their resumes alone and which should be interviewed by RJ Reynolds.

14. In screening those applications, Kelly Services used "resume review guidelines" provided by RJ Reynolds. A true and correct copy of a document setting forth the resume guidelines that was obtained from Kelly Services is attached to this Complaint as **Exhibit A** and incorporated herein.

15. RJ Reynolds's resume review guidelines listed various desired aspects of the "**targeted candidate**," including, among others, "willing to relocate," "leadership skill," "21 and over," "comfortable with tobacco industry," "**2-3 years out of college**," "**adjusts easily to changes**," "ability to travel 65-75% of time," and "bilingual candidates (is a plus, but not required)." (Emphasis added.) The guidelines also listed candidates to "**stay away from**," including, among others, "former employees of competitors," "candidates with DUI(s)," "graduates who held a 4.0 w/o involvement in other activities," and "**in sales for 8-10 years**." (Emphasis added.)

16. Kelly Services applied these guidelines when reviewing Mr. Villarreal's November 8, 2007 application for RJ Reynolds. Mr. Villarreal's application was rejected by Kelly Services on behalf of RJ Reynolds because Mr. Villarreal had over eight years of sales experience and was 49 years old, and RJ Reynolds had instructed Kelly Services to "stay away from" such candidates. Mr. Villarreal was well qualified for the Territory Manager position but, due to Mr. Villarreal's extensive sales experience and age, Kelly Services, acting on RJ Reynolds's behalf, rejected Mr. Villarreal's application and instead forwarded the applications of substantially younger individuals to RJ Reynolds for further consideration for the Territory Manager position.

17. In June 2010, after receiving an email from RJ Reynolds soliciting applications for the Territory Manager position, Mr. Villarreal again applied for a Territory Manager position with RJ Reynolds. Mr. Villarreal was 52 years old at the time of his June 2010 application, and he was well-qualified for the Territory Manager position.

18. Less than one week after applying, Mr. Villarreal received an email from RJ Reynolds rejecting his application and stating that RJ Reynolds was pursuing other individuals.

19. At the time of Mr. Villarreal's June 2010 application, RJ Reynolds continued to target candidates under 40 years of age and to reject candidates 40 years of age and over. Like his November 2007 application, Mr. Villarreal's June 2010 application for the Territory Manager was rejected because of his age. Rather than hiring Mr. Villarreal, RJ Reynolds hired substantially younger individuals.

20. Mr. Villarreal applied for the Territory Manager again in December 2010, May 2011, September 2011, and March 2012. He was well-qualified for the position, but was rejected on account of his age each time he applied. Each time, RJ Reynolds chose to hire individuals younger than 40 to fill the Territory Manager position.

21. Defendant Pinstripe has assisted RJ Reynolds in recruiting and screening applications for the Territory Manager position from at least April 2009 through the present, and was doing so when Mr. Villarreal applied for the position in 2010, 2011, and 2012. Pinstripe screened all of the applications for the position that RJ Reynolds received, including Mr. Villarreal's application, and it determined which applicants should be rejected based on their resumes alone and which should be interviewed by RJ Reynolds.

22. In screening applications, Pinstripe used “resume review guidelines” identical or almost identical to those in Exhibit A, pursuant to which Pinstripe rejected candidates like Mr. Villarreal who were 40 years of age or older, and instead forwarded on the applications of substantially younger candidates.

23. In addition to applying these resume review guidelines, Pinstripe and RJ Reynolds developed a candidate profile that identified the characteristics RJ Reynolds preferred in Territory Manager candidates. The profile labeled the ideal candidate as the “Blue Chip TM.” RJ Reynolds and Pinstripe created the profile by surveying recent hires who were nominated by management as ideal new hires. Because RJ Reynolds had been discriminating against persons over 40 in its hiring for Territory Manager positions, since at least September 1, 2007, the 2009 candidate profile created from strong recent hires not surprisingly was heavily weighted toward young persons. The profile stated that 67% of “Blue Chip TMs” had no prior experience or 1-2 years of work experience, while only 9% had six or more years of prior experience. Pinstripe used the “Blue Chip TM” candidate profile, as well as the resume review guidelines described above, in screening candidates for the Territory Manager position. A true and correct copy of the “Blue Chip TM” profile is attached as **Exhibit B**.

24. From at least September 1, 2007 (and perhaps earlier) through the present, RJ Reynolds has applied the same policy or practice of hiring only individuals under the age of 40 to fill the Territory Manager position. During that time, many hundreds, if not thousands, of qualified applicants other than Mr. Villarreal were similarly rejected because they were 40 years of age or older. Indeed, from September 1, 2007 through July 10, 2010, RJ Reynolds hired 1,024 people to fill the Territory Manager position, and only 19 of those hires (1.85%) were over the age of 40.

25. This hiring disparity was caused by RJ Reynolds's discriminatory practices, not by any unique characteristics of the Territory Manager position or the applicant pool. Throughout the relevant time period, individuals over the age of 40 constituted far more than 1.85% of the pool of applicants for the Territory Manager position. For example, the 2000 Census reported that more than 54% of the individuals occupying outside sales representative positions like the Territory Manager position are over the age of 40. Of the applications for the Territory Manager position screened by Kelly Services between September 2007 and March 2008, approximately 48% (9,100 of 19,086) were from individuals with eight or more years of sales experience, yet Kelly Services, following RJ Reynolds's guidelines, only referred 15% of that group on to RJ Reynolds for further

consideration, compared to 35% of individuals with less experience. Of the applications for the Territory Manager position screened by Pinstripe from February 1, 2010 through July 10, 2010, more than 49% (12,727 out of 25,729) were from individuals with 10 years or more of sales experience, but Pinstripe only forwarded 7.7% of the persons with 10 or more years of sales experience to RJ Reynolds for further review, rejecting 92.3% of them based on RJ Reynolds's discriminatory guidelines. In contrast Pinstripe forwarded 45% of the candidates who only had one-to-three years of sales experience.

26. Defendants Pinstripe and CareerBuilder assisted RJ Reynolds in recruiting and hiring applicants for the Territory Manager position, as described above. While assisting RJ Reynolds, these Defendants were aware of RJ Reynolds's policy of hiring only individuals under the age of 40 for the position, and applied that policy when screening applicants for the position. In assisting RJ Reynolds in recruiting, screening, and hiring applicants for the Territory Manager position, Defendants Pinstripe and CareerBuilder acted as agents of RJ Reynolds.

FACTS SUPPORTING EQUITABLE TOLLING

27. On May 17, 2010, Mr. Villarreal filed a charge of discrimination with the EEOC, alleging that RJ Reynolds discriminated against him on the basis of age in rejecting his November 8, 2007 application.

28. Mr. Villarreal did not file his charge before 2010 because he did not become aware until shortly before filing the charge that there was reason to believe that his 2007 application for the Territory Manager position had been rejected on account of his age. The facts necessary to support Mr. Villarreal's charge of discrimination were not apparent to him, and could not have been apparent to him, until less than a month before he filed his May 17, 2010 EEOC charge.

EEOC PROCEEDINGS

29. In July 2010, Mr. Villarreal filed an amended charge of discrimination including both the 2007 rejection and the June 2010 rejection of his application for the same position. In December 2011, Mr. Villarreal filed another amended charge of discrimination addressing the rejection of his December 2010, May 2011, and September 2011 applications for the Territory Manager position and adding, among others, Pinstripe and CareerBuilder as Respondents. Mr. Villarreal's EEOC charge, and the various amendments to his charge, are attached collectively as **Exhibit C**.

30. On March 26, 2012, Mr. Villarreal asked the EEOC to issue Notices of Right to Sue as to Defendants RJ Reynolds, Pinstripe, and Career Builder so that he could litigate the case in court against those Defendants on his own behalf. On April 2, 2012, the EEOC issued Notices of Right to Sue letters in Charge Numbers

435-2012-00211 and 435-2012-00212 – the charge numbers assigned to Pinstripe and CareerBuilder – and in Charge Number 410-2010-04714 – Mr. Villarreal’s original charge against RJ Reynolds. Copies of the EEOC right-to-sue letters as to RJ Reynolds, Pinstripe, and Career Builder are attached collectively as **Exhibit D**.

ADEA COLLECTIVE ACTION ALLEGATIONS

31. Mr. Villarreal brings this action for violation of the ADEA as a collective action pursuant to 29 U.S.C. § 626(b), (c), and 29 U.S.C. § 216(b).

Mr. Villarreal brings this collective action on behalf of:

all applicants for the Territory Manager position who applied for the position since the date RJ Reynolds began its pattern or practice of discriminating against applicants over the age of 40 (which Plaintiff is informed and believes was no later than September 1, 2007, and possibly earlier); who were 40 years of age or older at the time of their application; and who were rejected for the position (the “ADEA Collective Action Members”).

32. At all relevant times, Mr. Villarreal and the other ADEA Collective Action Members are and have been similarly situated. All of the ADEA Collective Action Members were subject to the same common, unified decisions, policies, practices, plans, procedures, programs, rules, and schemes of discrimination, pursuant to which Defendants willfully and intentionally rejected qualified applicants for the Territory Manager position 40 years of age and older and instead targeted and hired applicants under the age of 40.

33. In addition, all of the ADEA Collective Action Members were subject to the same common, unified decisions, policies, practices, plans, procedures, programs, rules, and schemes of discrimination, pursuant to which Defendants applied hiring guidelines that had an adverse or disparate impact on older workers, including guidelines targeting recent college graduates, candidates with 1-2 years of experience, and candidates who “adjust[] easily to change[],” and guidelines disfavoring applicants who have been in sales for 8-10 years or who have six or more years of prior experience. Mr. Villarreal’s claims against Defendants are the same in all material respects as those of the other ADEA Collective Action Members.

34. This action is properly brought under and maintained as an opt-in collective action pursuant to 29 U.S.C. § 216(b). The ADEA Collective Action Members are readily ascertainable. Their names and addresses are readily available from Defendants, and notice of this action, as permitted by the ADEA and *Hoffman-La Roche Inc. v. Sperling*, 493 U.S. 165 (1989), can readily be provided to the last current address reasonably ascertainable by Defendants’ records, and to any changes of address ascertained using the U.S. Post Office’s National Change of Address database and other publicly available records.

35. Mr. Villarreal hereby consents to sue under the ADEA and 29 U.S.C. §216(b). A copy of his consent to sue is attached as **Exhibit E**.

COUNT ONE

**Unlawful Pattern or Practice of Intentional Age Discrimination
(Disparate Treatment)
in Violation of the ADEA, 29 U.S.C. § 621 *et seq.***

36. Mr. Villarreal realleges and incorporates herein by reference the foregoing paragraphs.

37. Mr. Villarreal brings this action as a collective action, on his own behalf and on behalf of the other ADEA Collective Action Members.

38. Mr. Villarreal filed timely charges of discrimination with the EEOC, making claims of age discrimination on his own behalf and on behalf of all similarly situated individuals, and he has satisfied all preconditions to bringing this action. Mr. Villarreal has exhausted his administrative remedies on his own behalf and on behalf of the other ADEA Collective Action Members. Mr. Villarreal timely files this suit following notices of his right to sue.

39. At all relevant times, Defendants have been, and continue to be, employers or agents of an employer within the meaning of the ADEA, 29 U.S.C. § 630. Defendants Pinstripe and CareerBuilder are also employment agencies within the meaning of the ADEA. *Id.* At all relevant times, Defendants have been

engaged in interstate commerce within the meaning of the ADEA, *id.*, and all of the Defendants have employed, and continue to employ, twenty or more employees.

40. The ADEA makes it unlawful for employers and their agents “to fail or refuse to hire . . . any individual . . . because of such individual’s age.” 29 U.S.C. § 623(a)(1). Likewise, the ADEA makes it unlawful for any employment agency “to fail or refuse to refer for employment, or otherwise discriminate against, any individual because of such individual’s age, or to classify or refer for employment any individual on the basis of such individual’s age.” 29 U.S.C. § 623(b). These prohibitions apply if an employer, an employer’s agent, or an employment agency discriminates against an individual who is at least 40 years of age in favor of a substantially younger individual. 29 U.S.C. § 631(a); *General Dynamics Land Systems, Inc. v. Cline*, 540 U.S. 581 (2004).

41. By targeting applicants for the Territory Manager position under the age of 40, and rejecting applications of those 40 years of age or over, Defendants engaged in a pattern or practice of discriminating against qualified applicants over the age of 40, in violation of the ADEA. In addition, when targeting candidates with 1-2 years of experience pursuant to the “Blue Chip TM” candidate profile, Defendants used lack of experience as a proxy for age, and thereby engaged in a

pattern or practice of discriminating against qualified applicants over the age of 40, in violation of the ADEA. Defendants' violations of the ADEA were intentional and willful.

42. Defendants engaged in this unlawful age discrimination from at least September 2007 onward, and they continue to engage in unlawful age discrimination in hiring RJ Reynolds Territory Managers.

43. As a direct and proximate result of the foregoing violations of the ADEA, the ADEA Collective Action Members, including Mr. Villarreal, have sustained economic and non-economic damages, including, but not limited to, denial of the wages and other benefits provided to RJ Reynolds's Territory Managers, lost interest on those wages and other benefits, and loss of the opportunity to advance within RJ Reynolds. The ADEA Collective Action Members are entitled to recover economic and statutory damages and penalties, including back pay, front pay, liquidated damages, and other appropriate relief under the ADEA.

COUNT TWO

**Unlawful Use of Hiring Criteria Having
Disparate Impact on Applicants Over 40 Years of Age
in Violation of the ADEA, 29 U.S.C. § 621 *et seq.***

44. Mr. Villarreal realleges and incorporates herein by reference the foregoing paragraphs, except for the intent and willfulness allegations alleged in paragraphs 2, 32, and 41.

45. The ADEA, as construed by the United States Supreme Court, prohibits employment practices or policies that, although facially neutral with respect to age, have an adverse or disparate impact on older workers.

46. The RJ Reynolds resume review guidelines used by Defendants in screening applications for the Territory Manager position included criteria that, although not expressly directed at age, have disparate impact on applicants over the age of 40, in violation of the ADEA. Those criteria include, without limitation:

- a. That the “Targeted Candidate[s]” are those “2-3 years out of college” or “[r]ecent college grad[s];”
- b. That the “Targeted Candidate[s]” are those who “[a]djust[] easily to changes;” and
- c. The directive to “Stay Away From” applicants who have been “[i]n sales for 8-10 years.”

47. The “Blue Chip TM” profile also included criteria that, although not expressly directed at age, have disparate impact on applicants over the age of 40, in violation of the ADEA, including, without limitation, that a “Blue Chip TM” has “1-2 years of experience.”

48. By imposing and applying the foregoing resume review criteria and “Blue Chip TM” candidate profile, Defendants discriminated against qualified applicants over the age of 40, in violation of the ADEA.

49. Defendants engaged in these unlawful employment policies or practices from at least September 2007 onward, and they continue to engage in such unlawful age discrimination in hiring RJ Reynolds Territory managers.

50. As a direct and proximate result of the foregoing violations of the ADEA, the ADEA Collective Action Members, including Mr. Villarreal, have sustained economic and non-economic damages, including, but not limited to, denial of the wages and other benefits provided to RJ Reynolds’s Territory Managers, lost interest on those wages and other benefits, and loss of the opportunity to advance within RJ Reynolds. The ADEA Collective Action Members are entitled to recover economic and statutory damages and penalties, including back pay, front pay, liquidated damages, and other appropriate relief under the ADEA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Richard M. Villarreal, on behalf of himself and all others similarly situated, prays for the following relief:

- a. Certification of this action as a collective action brought pursuant to the ADEA, 29 U.S.C. § 626(b), (c), and 29 U.S.C. § 216(b);
- b. Designation of Plaintiff Richard M. Villarreal as the representative of the ADEA Collective Action Members;
- c. An order requiring that notice of the pendency of this action and of the right to opt into this action be provided, at Defendants' expense, to each of the ADEA Collective Action Members at the last current address reasonably ascertainable using Defendants' records and other publicly available records;
- d. A declaratory judgment that the practices complained of herein are unlawful and violate the ADEA, 29 U.S.C. § 621 *et seq.*;
- e. A permanent injunction against all Defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, prohibiting them from engaging in unlawful age discrimination in recruiting, screening, and hiring applicants for the Territory Manager position;
- f. A permanent injunction requiring that RJ Reynolds institute and carry out policies, practices, and programs that provide equal employment opportunities

for all job applicants regardless of age, and that eradicate the effects of its past and present unlawful employment practices;

g. Back pay and front pay (including interest and benefits) for all ADEA Collective Action Members who join this action;

h. Liquidated damages for all ADEA Collective Action Members who join this action;

i. Reasonable attorneys' fees and all expenses and costs of this action;

j. Pre-judgment interest, in the event liquidated damages are not awarded, as provided by law;

k. Such other and further legal and equitable relief as this Court deems necessary, just, and proper.

DEMAND FOR JURY TRIAL

Under Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury of all issues so triable in this action.

/s/ John J. Almond

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