



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**RODGER E. TULLIS**  
**2995 Overlook Road**  
**Silver Lake, Ohio 44224**  
  
**PLAINTIFF**

**VS.**

**GOJO INDUSTRIES, INC.**  
**c/o Incorp Services, Inc.**  
**Statutory Agent**  
**BDB AGENT CO.**  
**3800 Embassy Parkway**  
**Suite 300**  
**Akron, Ohio 44333**  
  
**DEFENDANT**

)  
) **CASE NO.**  
)  
) **JUDGE**  
)  
) **COMPLAINT FOR:**  
)  
) **1. WRONGFUL TERMINATION (AGE**  
) **AND/OR SEX DISCRIMINATION);**  
)  
) **2. FAILURE TO TRANSFER OR**  
) **REASSIGN (AGE AND/OR SEX**  
) **DISCRIMINATION);**  
)  
) **3. “SMEAR CAMPAIGN” (AGE**  
) **AND/OR SEX DISCRIMINATION**  
) **AND/OR RETALIATION);**  
)  
) **4. PROMISSORY ESTOPPEL;**  
)  
) **5. DISCRIMINATORY OR**  
) **RETALIATORY DENIAL OF**  
) **SEVERANCE (AGE AND/OR SEX**  
) **DISCRIMINATION OR**  
) **RETALIATION);**  
)  
) **6. INTENTIONAL INFLICTION OF**  
) **EMOTIONAL DISTRESS;**  
)  
) **7. FALSE LIGHT INVASION OF**  
) **PRIVACY;**  
)  
) **8. DEFAMATION**  
)  
)  
)  
) **(DEMAND FOR JURY TRIAL**  
) **ENDORSED HEREON)**  
)

## INTRODUCTION

1. This action is brought by Plaintiff Rodger E. Tullis (“Mr. Tullis”), a sixty-year-old male, against Defendant GOJO Industries, Inc. (“Defendant” ), where Mr. Tullis had worked for thirty-three consecutive years, pursuant to, *inter alia*, the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et seq.*, and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000 and 2000e *et seq.* (“Title VII”), including 42 U.S.C. § 2000e-2(a)(1) , for *inter alia*, age and/or sex and/or gender (sex and age hereafter collectively referred to as “sex”) discrimination for wrongful termination and/or discharge pursuant to a discriminatory claimed reduction in force, reorganization, lay-off and/or job elimination (collectively sometimes hereafter referred to as “RIF”), failure to transfer and/or reassign, a discriminatory and/ or retaliatory “smear campaign” and a discriminatory or retaliatory offer of severance. Mr. Tullis has also joined related pendent state claims.
2. Mr. Tullis realized early in his career that no one was going to hand him success. It wasn't luck, favoritism, or privilege - it was on him to work hard to build a successful career.
3. So, he did. Through dedication and perseverance, Mr. Tullis built a career beyond what he thought possible, and in the process built a line of business for Defendant beyond its expectations.
4. Mr. Tullis didn't just create success for himself. He built something bigger. He helped Defendant thrive. His results were proven and his leadership and business development acumen were well-documented.
5. At fifty-eight, Mr. Tullis was still working as hard and performing as well as he was at thirty-

five - driven by the same purpose, the same fire.

6. Then, suddenly, it was taken from Mr. Tullis.
7. Whatever the claimed justification, it wasn't about his performance, ability, effort, results, lack of merit or because he had slowed down—rather, it was because of discrimination against him due to his age and/or sex.
8. After thirty-three years of loyalty, leadership and success, Mr. Tullis wasn't celebrated. He wasn't honored as an example for the next generation. He was unceremoniously discarded.
9. Defendant then, *inter alia*, by virtue of its language in its severance agreement that ended severance payments upon re-employment, withdrew its offer of consideration during Mr. Tullis' requisite forty-five day consideration period, as required by the *Older Workers Benefit Protection Act* (OWBPA), 29 U.S.C.S. § 626 et seq., and disallowed Mr. Tullis severance payments despite, upon information and belief, at least one under forty and/or substantially younger laid off employee and one laid off female employee receiving severance payments after their re-employment.
10. As if taking everything Mr. Tullis had built while discarding him wasn't enough, upon information and belief, Defendant went on a “smear campaign” against Mr. Tullis even after the claimed RIF—through further discrimination and/or retaliation, to falsely paint him, including to customers of his subsequent employer, as a person who has problems with alcohol intoxication and related or other wrongdoings.
11. After thirty-three years of unblemished service, upon information and belief, Defendant allegedly weaponized these false and/or false light accusations as a pretextual justification about what it had done and/or to retaliate against him for retaining counsel and complaining

about discrimination.

12. Thus, Mr. Tullis seeks to set forth an accurate record of the harm he suffered, to hold Defendant accountable and to shine a light on the darkness he has endured so that others who follow in his path will neither face unlawful discrimination nor retaliation for speaking out about discrimination.

### **JURISDICTION AND VENUE**

13. This Court has jurisdiction of these claims pursuant to, *inter alia*, 28 U.S.C. § 1331 because the action arises under the laws of the United States and involves federal questions based on the ADEA and Title VII. This Court also has supplemental and pendent jurisdiction of the state law claims pursuant to 28 U.S.C § 1367.
14. Venue lies in this Northern District of Ohio, Eastern Division, because Defendant is doing business in and Mr. Tullis was discriminated and retaliated against and the claims alleged herein arose in this District. Furthermore, venue is proper in this District since this is the District and Division in which all and/or a substantial part of the events or omissions giving rise to the claims occurred and in which Mr. Tullis lives. Venue additionally lies in this District because the unlawful employment practices were committed in this judicial district.
15. Ohio is a deferral state which, along with a work sharing agreement between the Equal Employment Opportunity Commission (“EEOC”) and the Ohio Civil Rights Commission (OCRC), provides for and allows, *inter alia*, a charge of discrimination to be filed within 300 days of a discriminatory or retaliatory act or of learning of a discriminatory or retaliatory act or longer if certain acts are continuing or continuous.
16. All jurisdictional and administrative prerequisites with respect to Mr. Tullis’s claims have

been met, to wit: Mr. Tullis timely filed a charge of discrimination with the EEOC on or about June 15, 2024, less than three hundred (300) days from the then last continuous act of discrimination and retaliation by Defendant against Mr. Tullis. A true and accurate copy of this charge (other than his birth date redaction) is attached hereto as Exhibit “A”.

17. Moreover, Mr. Tullis timely filed his EEOC charge within 300 days after Defendant communicated and Mr. Tullis first learned of adverse employment actions, including final adverse employment action decisions, complained about herein, including, *inter alia*, that Mr. Tullis was terminated /or discharged pursuant to a discriminatory claimed RIF, was not transferred and/or reassigned or given the opportunity to transfer and/or reassign by or remain employed with Defendant via an alternative to discharge, that Defendant engaged in a discriminatory or retaliatory “smear campaign” against Mr. Tullis and that Defendant’s offer of severance was discriminatory or retaliatory.
18. The EEOC in turn dual-filed the EEOC charge with the OCRC.
19. The EEOC issued its Notice of Right to Sue on and dated January 10, 2025, a true and accurate copy of which is attached hereto as Exhibit “B”.
20. This EEOC Notice of Right to Sue also satisfies Ohio requirements for filing Mr. Tullis’s state law claims, including pursuant to Ohio Rev. Code § 4112.052(B)(2)(b).
21. This Complaint is being filed within 90 days of Mr. Tullis’s receipt of the EEOC Notice of Right to Sue and, for his state law claims, within two years of the unlawful discriminatory and retaliatory practices complained of herein, not including applicable tolling per Ohio Rev. Code § 4112.052 (C), and Mr. Tullis has satisfied the federal and state jurisdictional requirements.

**PARTIES**

22. Mr. Tullis is an individual citizen of the United States and Ohio and is an Ohio resident who at all material times lived and resided in Silver Lake, Ohio.
23. Defendant is an Ohio corporation registered to do business in and does business in Ohio with its headquarters in Akron, Ohio and is engaged in the business of manufacturing hand hygiene and skin care products, including *PURELL*<sup>™</sup>, a hand sanitizer, and at all material times has had approximately 2,500 employees.
24. Defendant hired Mr. Tullis as an at-will employee beginning on August 27, 1990 and he remained employed for thirty-three consecutive years, most recently as Sales Vice President, Foodservice & B2B Retail ("Foodservice") - managing the Foodservice Distribution Channel and the Flagship Global Corporate Account Mr. Tullis pioneered and built from scratch.
25. Defendant, directly and by and through its agents, supervisors, management, employees and/or representatives, directly and/or vicariously engaged in actions and inactions, as is more fully set forth throughout this Complaint, in which Defendant willfully, intentionally, continually and unlawfully, *inter alia*, discriminated against Mr. Tullis by discharging and failing to transfer him because of his age and/or sex; engaged in a "smear campaign" because of his age and/or sex or in retaliation for engaging in protected activities and/or offered him a discriminatory or retaliatory severance and ratified said actions and inactions.
26. Defendant for the allegations set forth in this Complaint acted with gross negligence, intent, malice and/or a conscious or reckless indifference or disregard to Mr. Tullis's federally and state protected right to work without unlawful discrimination or retaliation.

**FACTUAL ALLEGATIONS**

27. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
28. Mr. Tullis is male and was 58-years-old at the time of his termination and/or discharge pursuant to a discriminatory claimed RIF by Defendant that he first learned of on August 31, 2023.
29. Defendant terminated Mr. Tullis and/or discharged him pursuant to a discriminatory claimed RIF because of his age and/or sex.

**A. Mr. Tullis's Excellent Performance**

30. Mr. Tullis's performance was excellent and through his dedication, hard work and determination, he built and maintained Defendant's Foodservice and Retail B2B customer base and business: Distribution, Chains and Bunzl/R3 Globally.
31. Mr. Tullis's reputation within management and with his customers was excellent and his customers, in fact, complained to Defendant about Mr. Tullis' termination and/or discharge pursuant to a discriminatory claimed RIF.
32. Mr. Tullis was one of the leading salespersons with Defendant and one of the top revenue and profit-generating sales professionals in the seventy-five plus year history of Defendant.
33. For example, Mr. Tullis launched one of Defendant's biggest Distributors and one of its best customers--its only true global customer.
34. Moreover, Mr. Tullis brought in approximately ninety percent of Defendant's Foodservice customers, including new distribution and large end-user customers, and personally developed and maintained top-to-top relationships.

35. Mr. Tullis built or rebuilt every Foodservice relationship—both Distribution and Chain business—and had relationships with every Foodservice Distribution customer and many of the current Chain customers, resulting in approximately \$1 Billion in sales and further client development.
36. Defendant's Retail B2B vertical market and National Account team were both created and built from Mr. Tullis's hard work and relationships with his largest clients.
37. During Mr. Tullis's thirty-three-year career with Defendant, Mr. Tullis had only outstanding performance reviews and had zero disciplines, write ups or poor reviews—and had not received one complaint, discipline or write-up about alleged intoxication or other alleged related or unrelated wrongdoings during his employment.

**B. Pattern of Discriminatory or Pretextual “Layoffs” of Older Males**

38. Prior to Mr. Tullis's termination and/or discharge pursuant to a discriminatory claimed RIF, that Defendant allegedly used as false and pretextual justification to terminate Mr. Tullis, Defendant during an NBC broadcast made assurances that the company was doing fine and layoffs were not needed.
39. During the past up to approximately four years, based on information and belief, unbeknownst to Mr. Tullis then and not known by him until following his termination, Defendant underwent an alleged substantial change, campaign and scheme to eliminate over forty and/or substantially older males either through 1) claimed RIFs that were discriminatory and that predominantly selected for discharge older males; 2) targeted termination(s) based on claimed petty grounds that did not apply to its under forty and/or substantially younger and/or female employees; and/or 3) forced retirement whereby older males were given the

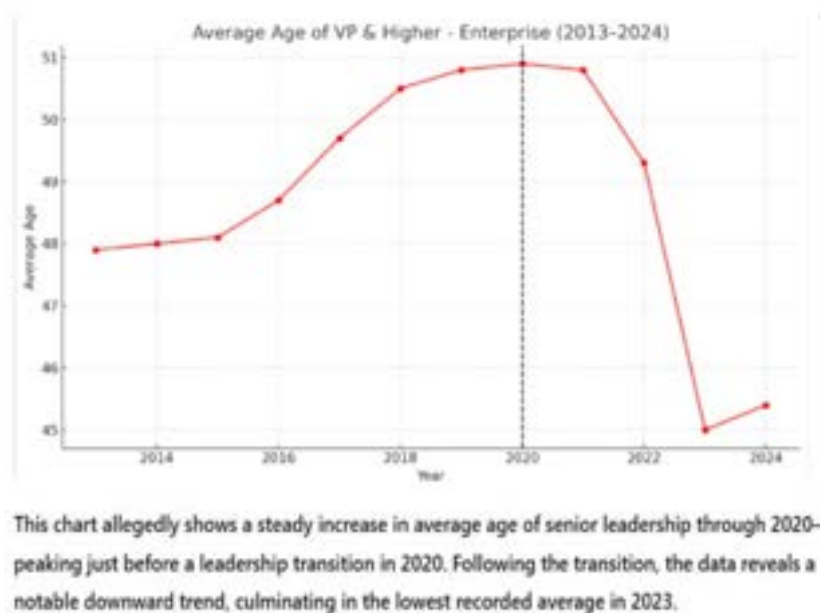


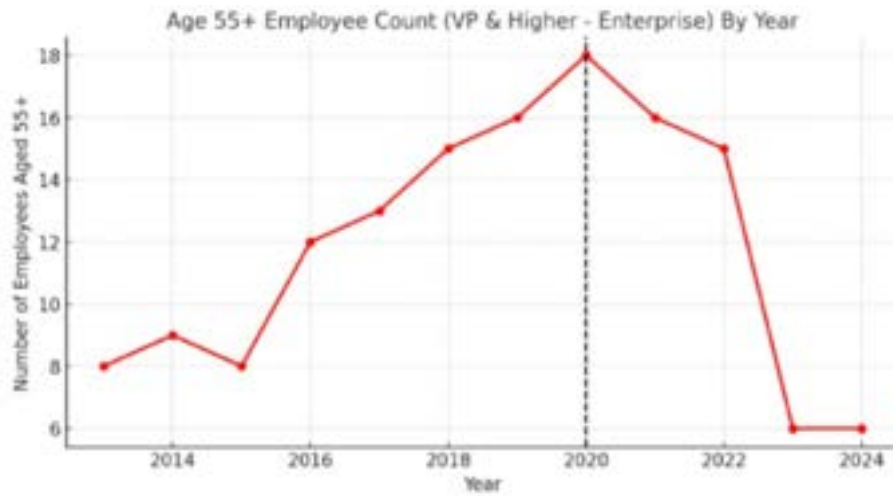
choice to either retire or be discharged, and then replaced with and/or retain under forty and/or substantially younger and/or female employees.

40. Defendant had successive claimed RIFs during September, 2021; May, 2022; and August, 2023 (and shut down Europe operations during May, 2024).
41. Upon information and belief, Defendant's alleged pattern and practice of discrimination and intentional disparate treatment and/or disparate impact, including using these successive claimed RIFs as pretext to discharge employees over the age of forty and/or substantially older and/or male employees, adversely affected, impacted and/or terminated entire or large classes of older and/or, male employees.
42. Indeed, based upon information and belief available now to Mr. Tullis, the average age of employees in upper level leadership and management who were allegedly laid off and effectively discharged by reason of the foregoing scheme through recent years was sixty-one years old with twenty-four-years of loyal service to Defendant—and they were all male.
43. Upon information and belief, Defendant with alleged discriminatory intent, disparate treatment and/or via the enactment of one or more policies that had a disparate impact (including, but not limited to, proxy discrimination and/or overdiscrimination) intentionally used pretextual claimed RIFs and involuntary retirements to “clean house” of older and/or male employees and change its workforce and that substantially younger comparable employees and/or female employees were retained while more qualified, experienced and historically successful older male employees over the age of forty or substantially older who built Defendant were terminated.
44. In the alternative, upon information and belief, Defendant allegedly adopted a facially neutral

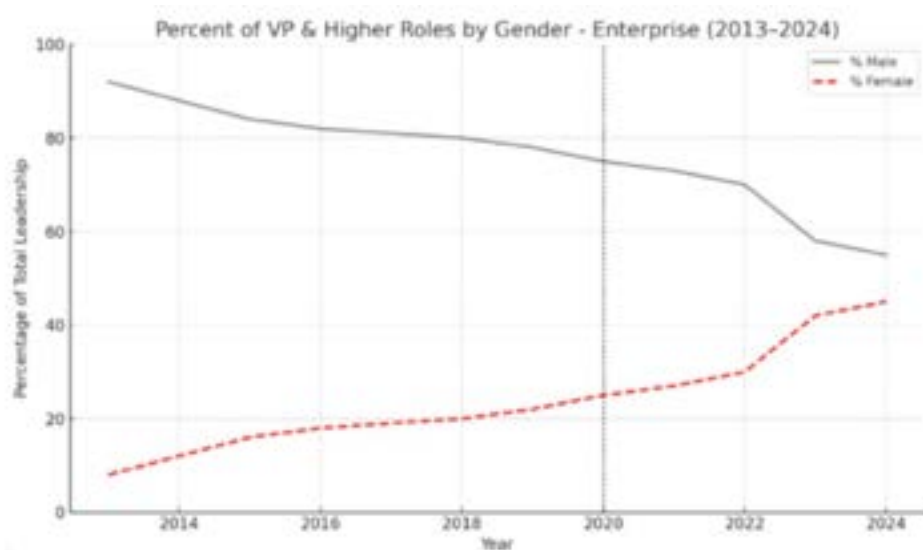
policy or policies with discriminatory animus (disparate treatment) for overdiscrimination and/or "proxy" discrimination against Mr. Tullis because of his age and/or sex.

45. Upon information and belief, statistics based on data available to Mr. Tullis allegedly show older employees over the age of forty and/or substantially older and/or male employees were overrepresented in claimed layoffs and forced retirements at a significant level and were more adversely and disparately affected, treated and/or impacted than those substantially younger employees and/or employees under the age of forty and/or female employees and this disproportionate number of older male workers who were allegedly laid off and/or forced to retire or otherwise discharged allegedly resulted in a percentage that also creates an inference of disparate treatment and/or impact to older male employees.
46. Based upon information available to Mr. Tullis, he has prepared the following charts in an effort to show this alleged pattern and practice of age and/or sex discrimination by means of, *inter alia*, Defendant using successive claimed RIFs and his claimed RIF as a cover-up or pretext for discharging employees on the basis of their age and/or sex:





Upon information available to Mr. Tullis and belief, this chart allegedly shows a steep drop in VP-level employees aged 55+ after leadership changes in 2020. Out of 17 older male leaders in 2020 (55+), only 1 of those 17 remained by 2024.



This chart allegedly illustrates the dramatic shift in gender composition at the VP-and-higher level at Defendant between 2013 and 2024. Female representation rose from just 6% to 44% during this period—an increase that accelerated sharply following a new CEO appointment in 2020. Meanwhile, male representation fell from 94% to 56%.

**C. Mr. Tullis's Sudden, Unexpected and Shocking Termination and Claimed Pretextual Layoff by Defendant on August 31, 2023**

47. On August 31, 2023, Mr. Tullis first learned Defendant claimed he was “laid off”, that his position was allegedly eliminated as part of a larger claimed RIF, which was upon information and belief pretext for discrimination against him based on his age and/or sex.

**D. Shifting Pretextual Claimed Basis for the Claimed RIF and Claimed Elimination of Mr. Tullis's Job**

48. Defendant's claimed basis and justification for the claimed RIF was and is both false and shifting.
49. Defendant initially claimed to Mr. Tullis at the time of his termination that Defendant was no longer focused on Foodservice and had to dismantle the Foodservice Department, causing Mr. Tullis's job to be eliminated, which was and is upon information and belief false and pretextual.
50. Upon information and belief, Defendant's pretextual claim that Defendant was no longer focused on Foodservice and had to dismantle the Foodservice Department was incredible for many reasons.
51. First, shortly before Mr. Tullis's termination, Defendant's focus *was actually on Foodservice*, specifically Distribution within Foodservice under Mr. Tullis's management rather than Chains within Foodservice under the management of Stephanie Payne (female, then age 36)(“Payne”), who once reported to Mr. Tullis and who Defendant retained despite the claimed RIF.
52. Second, Foodservice Distribution was actually *a key and top three initiative for Defendant's entire company during 2023* and the most attractive market for growth as determined in a

*Bain Capital* study funded by Defendant 2020-2021.

53. Third, upon information and belief, immediately after Mr. Tullis was terminated, Defendant shifted and retracted its claimed basis and pretextual position *and admitted it was still focusing on Foodservice*.
54. Fourth, upon information and belief, at a post-termination event sponsored by Defendant and pioneered by Mr. Tullis during the summer of 2021 which included several current Foodservice Distribution Leadership employees, Defendant represented and confirmed it is actually working towards a “bright future” in the foodservice industry.
55. Regardless, upon information and belief, Mr. Tullis was allegedly the only Foodservice sales employee who Defendant actually allegedly discharged as part of an alleged RIF.
56. Upon information and belief, other than terminating Mr. Tullis and allegedly playing a shell game with renaming positions or reshuffling them to other departments—all distinctions without differences—nothing has changed and the entire Foodservice team—including Distribution-- is upon information and belief still working on the same accounts, regardless of any diversionary changes in titles or alignment merely on paper by Defendant.

**E. Numerous Alleged Violations of the OWBPA Demonstrate Further Pretext for Age Discrimination**

57. In 1990, Congress amended the ADEA, adding the OWBPA to clarify prohibitions against age discrimination.
58. The OWBPA, *inter alia*, sets strict requirements for a company’s waiver of the right to sue for age discrimination in order to protect older employees by seeking to make sure the waiver is knowing and voluntary.
59. Thus, the OWBPA prohibits an individual from waiving any right or claim under the ADEA

unless such waiver is knowing and voluntary, so employees forty or over can make an informed choice about whether to sign the waiver.

60. The OWBPA “acts as a safety net to ensure older and vulnerable workers aren’t unfairly laid off from work and don’t experience age discrimination”--*Cornell Law School Legal Institute*.
61. Since the OWBPA establishes minimum or threshold requirements, absolute technical compliance with its provisions is required.
62. Upon information and belief, Defendant, *inter alia*, manipulated the data and/or omitted necessary information and/or presented it in a confusing manner to laid off employees forty or older, including in its claimed “Decisional Unit” provided to Mr. Tullis in connection with an offer of severance, including by allegedly making confusing, misleading and/or false statements therein, for example including persons bearing no reasonable relationship or commonality to the “Decisional Unit” or others who were not actually laid off or by excluding those who were forced into “retirement” or allegedly terminated on petty grounds, in violation of the OWBPA, allegedly to confuse Mr. Tullis and other laid off employees over forty and to allegedly attempt to show the lack of a statistical relationship between the claimed RIF and age and to prevent older employees over forty chosen for the claimed RIF, including Mr. Tullis, from having sufficient information about the program to make a “knowing and voluntary” waiver of claims under the ADEA.
63. For example, Defendant failed and refused to provide and/or describe the *eligibility factors* and *selection criteria* allegedly used to select employees, and to allegedly specifically select and discharge Mr. Tullis, for the discriminatory claimed RIF, as required by the OWBPA.
64. Moreover, Defendant had successive claimed RIFS during 9/2021, 5/2022 and 8/2023 that

took place in successive increments over a period of time; thus the information supplied to Mr. Tullis and others was required to be cumulative to include these past claimed RIFs, so that later terminees such as Mr. Tullis are provided requisite information for all persons in the “Decisional Unit(s)” at the beginning of the program and all persons terminated to date, as required by the OWBPA, and involuntary retirements of those from the Decisional Unit since the first RIF, but such information was not provided to Mr. Tullis or others.

65. Upon information and belief, Defendant also allegedly misrepresented the status of Greg Conner-age sixty seven, with thirty-one years of service-by listing him as "not selected" for the RIF, despite the fact that his retirement had already been publicly communicated prior to the RIF's execution. Including Mr. Conner in the OWBPA disclosure allegedly served no legitimate purpose other than to create the illusion that older male employees were being retained, thereby diluting the appearance of age discrimination and making the RIF seem more objective and less discriminatory than it allegedly actually was.
66. Upon information and belief, other senior male employees-such as Ron Hammond (67) and Tim Dye (57)--departed Defendant shortly after the August 31, 2023 RIF, despite holding comparable roles and experience levels to those impacted. Neither individual was listed in Defendant's OWBPA disclosures or identified as part of any Decisional Unit.
67. Furthermore, upon information and belief, an older male, Clay Gray, who Defendant claimed was discharged via the August, 31, 2023 RIF, was, in the alternative, allegedly replaced by the 36-year old Payne on the same day as the August 31, 2023 RIF.
68. Defendant also allegedly lumped one-hundred sixty-four employees into one “Sales” Decisional Unit—one hundred thirty nine sales roles and twenty-five non-sales roles.

69. The sales roles also mixed all levels: entry-level such as Sales Managers, mid-level such as Sales Directors, senior-level such as a Sales VP, and even Regional Directors (by geography).
70. For example, Mr. Tullis's job was about big-picture strategy for Foodservice, while a Sales Manager is just doing direct sales—totally different roles, totally different reasons for allegedly picking who gets terminated.
71. Upon information and belief, the inclusion of younger, lower-level roles in the same Decisional Unit allegedly artificially lowers the average age of the group and conceals the disproportionate impact on older, senior-level leaders like Mr. Tullis.
72. Moreover, Defendant offered no explanation as to why twenty-five non-sales employees were even categorized in a “Sales” unit.
73. Furthermore, upon information and belief, none of the other employees chosen for discharge in the claimed RIF who were not in the provided “Decisional Unit” were described; nor were other Decisional Units described.
74. Again, the purpose of each of the OWBPA requirements, and in particular the OWBPA disclosure form, is to ensure that the employees being offered severance or other exit benefits in connection with an employment termination program have sufficient information about the program to make a “knowing and voluntary” waiver of claims under the ADEA.
75. If these minimum requirements are not satisfied, the ADEA waivers are invalid and unenforceable.
76. Regardless, the foregoing alleged omissions and misleading information also sets forth additional pretext for age discrimination.



**F. Additional Examples of Pretext**

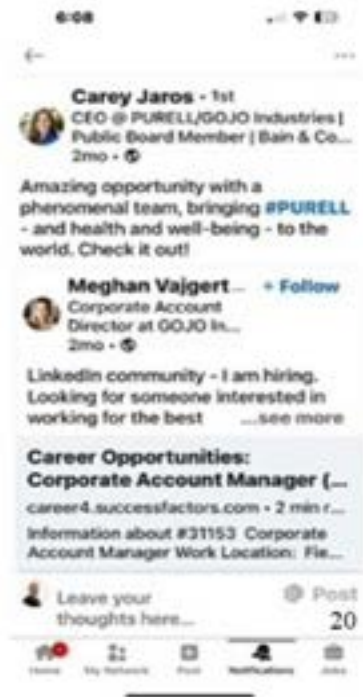
77. Additional non-exclusive examples of pretext exist.
78. Mr. Tullis's leadership of Distribution-and his decades at Defendant-speak for themselves. He helped build some of Defendant's largest customers and its only global distribution partner, while playing a central role in long-term revenue generation and in building nearly every key Foodservice and National Account relationship.
79. Upon information and belief, in communications to employees prior to the RIF, Defendant's CEO allegedly stated that the RIF would prioritize "projects and work that most directly grow sales and serve our customers." Yet Mr. Tullis, who led GOJO's Foodservice Distribution business-one of the most customer-facing and growth-oriented units-was discharged after being selected for the claimed RIF.
80. If the CEO's alleged statement were true, Mr. Tullis, as the top salesperson in Foodservice, who obtained, developed and maintained most Foodservice customers and was one of the top salespersons in the corporation, would have been the first person in Foodservice retained, not the only sales person in Foodservice to actually be discharged.
81. Upon information and belief, aside from the shifting justifications, claiming Mr. Tullis was laid off because of the sudden focus on customers and sales simply sets logic on its head, is an allegedly false and unreasonable explanation not worthy of credence, and is clearly pretextual.
82. Upon information and belief, Defendant further shifted and allegedly claimed the RIF was an effort to cut waste and inefficiency and pretextually claimed that the waste was in Distribution, which is false.

83. Moreover, both Distribution and Chains fell under Mr. Tullis's leadership prior to the pandemic, supported by a shared marketing budget. After COVID, Mr. Tullis promoted Payne to VP of Chains, reporting to Mackay, while he continued leading Distribution. Despite the distinct business models, Defendant disproportionately allocated marketing resources and leadership focus toward Chain initiatives.
84. Upon information and belief, numerous examples allegedly exist to show the waste and inefficiency was and continued to be in Chains, not Distribution, and that claiming the layoff was an effort to cut waste and inefficiency as it pertains to Mr. Tullis is also pretextual.

**G. Scheme to Disguise Terminations as "Lay Offs"**

85. Upon information and belief, as part of Defendant's alleged scheme to disguise terminations as layoffs, it entered into severance agreements with males forty and over or substantially older and/or male employees it terminated that contained a release and waiver of all claims against Defendant and then, after the Agreement was signed and executed by such employees, Defendant allegedly replaced some employee(s) over the age of forty or substantially older males with females under the age of forty and/or substantially younger and/or female employees.
86. For example, upon information and belief, Defendant terminated Jamie Quilter (male, age 50)("Quilter") but retained Meghan Vajgert ("Vajgert") (female, age 39), while she was on probation, who had a comparable position, then allegedly falsely claimed Quilter's position was eliminated.
87. Upon information and belief, within a few months of Quilter signing a severance agreement and release, Quilter's position was allegedly reposted by Defendant and he was replaced by

a younger employee. *See LinkedIn* posts allegedly evidencing the opening of Quilter's position that was supposedly eliminated in Defendant's claimed August 31, 2023 RIF:



88. Moreover, upon information and belief, Justin Miller (then 40) was discharged after his position was allegedly eliminated via the August 31, 2023 RIF, but he was allegedly replaced with John Koke (then 32) shortly thereafter.
89. Similarly, upon information and belief, after Clay Gray (male, age 51) was selected for the claimed August 31, 2023 RIF and discharged due to an alleged job elimination, Defendant, in the alternative, allegedly replaced Mr. Gray with then 36-year-old female Payne on the same day as the August 31, 2023 RIF. Notably, Mr. Gray had only assumed his role in 2021 after replacing Keith Dare, a 65-year-old male who was allegedly involuntarily retired after 32 years of service. In effect, Defendant allegedly replaced Mr. Dare's senior leadership position with Mr. Gray, and then, in the alternative, with Payne—ultimately replacing a

65-year-old male with a 36-year-old female within a span of about two years, under the alleged pretext of position eliminations.

90. Similarly, based upon information and belief, Defendant had allegedly planned to replace Mr. Tullis with Payne following Mr. Tullis's termination.

**H. Effective Alleged Replacement of Mr. Tullis by Lesser Qualified, Experienced and Accomplished and Substantially Younger Female Employee**

91. Upon information and belief, by comparison, the substantially younger and/or female employee or employees who were retained and/or allegedly effectively replaced Mr. Tullis, including Payne, who were originally hired to merely support and maintain existing accounts brought in by Mr. Tullis, have allegedly not brought in new distribution or end user business and actually lost customers.
92. There are few Foodservice accounts where the relationship was built, maintained and/or improved by someone other than Mr. Tullis.
93. By comparison, upon information and belief, under Payne's Chain management—which involved merely maintaining existing accounts Mr. Tullis delivered and developed—Payne allegedly lost Defendant's two largest Chain customers.
94. Moreover, upon information and belief, another one of Mr. Tullis's Foodservice distribution accounts he brought in was allegedly lost following his termination under the management of an alternative replacement of Mr. Tullis, the substantially-younger Paul Lenhart ("Lenhart") (age 43), who had reported to Mr. Tullis before his termination, and/or, to a lesser extent, Vajgert—who also reported to Lenhart, but ultimately to Mr. Tullis.
95. Upon information and belief, Payne was allegedly retained and chosen to replace Mr. Tullis despite far less qualifications, experience and accomplishments and little new business

pioneered on her own.

96. Upon information and belief, Payne was promoted on paper to national accounts despite no prior profitable national account business base development and zero Commercial Real Estate business experience.

**I. Alleged Fulfillment of Prior Plan to Replace Mr. Tullis with Payne**

97. Upon information and belief, Payne was an insider who knew of Defendant's alleged plan to replace Mr. Tullis with Payne following a claimed RIF.
98. Indeed, shortly prior to Mr. Tullis's discharge as part of the claimed RIF, Payne met with Mr. Tullis and asked to accompany Mr. Tullis to meet Mr. Tullis's Distribution clients, even though Payne was then assigned to Chains, not Distribution, and also allegedly met with Mr. Tullis's team members without his knowledge and attended Mr. Tullis's team meeting during August 2023.
99. Upon information and belief, prior to the RIF, Payne allegedly told others—both internally and externally—that Mr. Tullis was being terminated and that Payne would be taking over Mr. Tullis's position, despite no formal announcement having been made. Upon information and belief, following the RIF announcement, a co-worker called Payne to congratulate her, to which she allegedly responded words to the effect of: "I'm not so sure... that wasn't the plan."
100. Additionally, after the RIF, Payne directly told Mr. Tullis that it made no business sense to her why Defendant had split Chains and Distribution.
101. Upon information and belief, Defendant as a result was thereafter allegedly forced to engage in a "shell game" to allegedly attempt to disguise and hide that Payne was performing Mr.

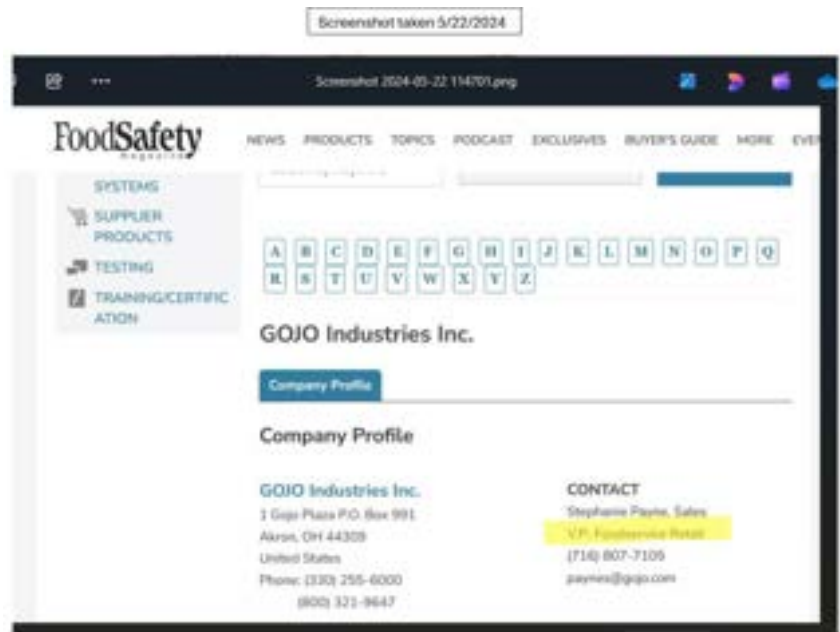
Tullis's Distribution work—even though Defendant allegedly assigned her “on paper only” to a different position removed from not only Distribution, but FoodService as well.

102. Payne admitted during her complaint to Mr. Tullis following Mr. Tullis's termination and/or discharge pursuant to the claimed RIF that her new responsibilities on paper and breaking up and separating Distribution and Chains was not part of Defendant's plan—since she expected to and upon information and belief was allegedly told by Defendant she would manage Distribution following Mr. Tullis's termination.
103. Upon information and belief, Payne was then completely removed from FoodService and Retail only “on paper”, but she nevertheless allegedly continued to effectively perform Mr. Tullis's work.
104. That is, upon information and belief, Payne allegedly did not retain all of her prior job functions and was allegedly effectively reassigned by Defendant to replace certain job functions of Mr. Tullis's Vice President Sales Foodservice position. In this regard, upon information and belief, on the day of the August 31, 2023 RIF, Defendant allegedly promoted a person —without formal process—to replace some of Payne's alleged newly assigned duties.
105. In furtherance thereof, upon information and belief, at an IFMA industry event during November, 2023, Payne registered as “Sales Vice President Foodservice”—Mr. Tullis's title at the time of Mr. Tullis's alleged RIF termination—which is direct evidence that she replaced

Mr. Tullis, as shown by the below attendee list screenshot for the event:



106. Moreover, Payne, as of May, 2024, is also shown in a Food Safety magazine company profile directory as “Stephanie Payne, Sales V.P. –Foodservice Retail”--Mr. Tullis’s title at the time of the claimed RIF-- as shown by the below screenshot of the directory:



107. As further non-exclusive examples evidencing Payne replacing Mr. Tullis: upon information and belief, Payne allegedly attended the IFDA Conference during January 2024—an industry event for Distribution customers which Mr. Tullis initiated Defendant’s participation in; and also allegedly attended a customer Foodservice Trip for Foodservice Distribution with Vajgert, which Payne was allegedly supposedly “on paper” removed from.
108. Upon information and belief, Payne—who, in the alternative, is believed to have replaced Mr. Tullis, registered Payne and Vajgert shortly after Mr. Tullis’s discharge via a claimed RIF for a Mediterranean cruise incentive trip of a Foodservice Re Distribution customer of Mr. Tullis, allegedly without invitation or any then apparent formal business justification.
109. Upon information and belief, Payne further following Mr. Tullis’s termination and/or discharge pursuant to a claimed RIF referred to employees who had reported to Mr. Tullis in Distribution as suddenly “her team” to the the third largest FoodService Distributor in the country that Mr. Tullis handled prior to Mr. Tullis’s discriminatory termination.
110. Moreover, upon information and belief, Payne continually made expensive Foodservice Distribution trips for events along with Vajgert despite Payne on paper supposedly not working in Mr. Tullis’s former distribution area.
111. Upon information and belief, Payne planned on and continued to entertain and manage Defendant’s Distribution clients that Mr. Tullis obtained and/or handled.
112. In the alternative, upon information and belief, Defendant effectively replaced Mr. Tullis with the substantially younger Lenhart.
113. In the alternative, upon information and belief, Lenhart and/or Payne substantially performed and/or perform Mr. Tullis’s prior duties and less of their former duties and Payne is



performing Mr. Tullis's Distribution work despite not being assigned to Distribution on "paper".

114. Upon information and belief, Payne and/or Lenhart effectively replaced Mr. Tullis, including in the alternative, as they perform substantially less of their assigned or preassigned work in place of performing Mr. Tullis's duties.

115. Upon information and belief, far from eliminating Mr. Tullis' position, approximately one hundred percent (100%) of Mr. Tullis's job duties were allegedly retained and are still being performed.

**J. Upon Information and Belief, and/or in the Alternative, Defendant Was Allegedly Aided and Abetted by Payne—a Cat's Paw Insider**

116. Upon information and belief, and/or in the alternative, Payne was allegedly an insider and "cat's paw" (a biased subordinate who discriminated against Mr. Tullis due to his age and/or sex) who aided and abetted Defendant in its plot to terminate Mr. Tullis via a claimed layoff due to Mr. Tullis's age and/or sex and allegedly effectively replaced Mr. Tullis with an employee under forty years old or substantially younger and/or a female employee.

117. Indeed, Payne had stated to other employees of Defendant and industry colleagues in response to someone stating Mr. Tullis can't retire for at least ten more years: "do you now how old he is".

118. Moreover, upon information and belief, Payne allegedly complained about Mr. Tullis's claimed and/or false intoxication to Defendant, but not alleged worse intoxication of females and/or substantially younger males.

119. For example, upon information and belief, Payne allegedly complained to Defendant's Human Resources about a joking comment Mr. Tullis made about his longtime friend,

- referring to him as a “leprechaun”, at a 2023 Firestone event partly hosted by Defendant.
120. Mr. Tullis’s friend was not offended.
121. At the same event, upon information and belief, Defendant’s substantially younger Chief Commercial Officer allegedly became heavily intoxicated and had to be escorted to his room by Payne—yet she allegedly did not file a complaint against him.
122. Upon information and belief, the event itself was alcohol-focused, with Payne and Vajgert allegedly organizing multiple open-bar and liquor-themed activities, further allegedly demonstrating a long-standing culture of alcohol-centered events that Defendant’s leadership not only condoned, but promoted.
123. Upon information and belief, Payne knew prior to Mr. Tullis’s termination that Mr. Tullis was being discharged.
124. Unbeknownst to Mr. Tullis, upon information and belief, Payne allegedly admitted and disclosed to one or more other employees of Defendant prior to Mr. Tullis’s termination that Payne reported Mr. Tullis to Human Resources about the leprechaun/alleged intoxication incident; that Mr. Tullis was being terminated; and Payne was going to take over Mr. Tullis’s position and replace him.
125. Indeed, on the morning of August 31, 2023, Payne contacted Mr. Tullis and informed him of his termination before Defendant notified him. That same day, upon information and belief, Payne allegedly began calling Mr. Tullis’s customers and had allegedly already prepared a custom T-shirt referencing Mr. Tullis’s departure--believed to further confirm she had prior knowledge of Mr. Tullis’s termination.
126. This T-shirt which she gave to Mr. Tullis said “2023 Retired to Grandpappy”.

127. Upon information and belief, at the time of Mr. Tullis's discriminatory termination, Payne and/or her team allegedly represented to Mr. Tullis's customers he introduced Payne to for the past ten years that Mr. Tullis built for the past twenty years not that Mr. Tullis's job was eliminated or that Mr. Tullis was discharged pursuant to a claimed RIF, but that Mr. Tullis *was terminated due to intoxication issues*, which Defendant never discussed with Mr. Tullis while he was employed by Defendant.
128. Upon information and belief, the President of one of Defendant's most significant customers who had worked closely with Mr. Tullis for decades reached out directly to Defendant's CEO on or about September 1, 2023 following Mr. Tullis's termination to express concern and to question the rationale about Defendant's decision to discharge Mr. Tullis.
129. Upon information and belief, during this foregoing conversation, Defendant's CEO allegedly declined to provide any explanation, stating only that she "could not discuss specifics," and made a reference to "the family" supporting the decision; the publicly-announced RIF was not mentioned as the reason and no general business rationale was offered. As a result, upon information and belief, this customer's President was left with the impression that Mr. Tullis's termination may have involved factors beyond the publicly-announced RIF.

**K. Defendant's Alleged Alternative, Shifting Pretextual Claimed Basis for Mr. Tullis's Termination--Intoxication--is False and, Regardless, Discriminatory as Defendant Allegedly Did Not Take Adverse Action Against its Substantially Younger and/or Under Forty and/or Female Employees for Substantially More Severe Intoxication Issues than it Allegedly Claimed About Mr. Tullis**

130. Upon information and belief, if Payne is accurate and Defendant claimed it terminated Mr. Tullis not because he was selected for a claimed RIF but because of claimed intoxication, then Defendant's discharge of Mr. Tullis as part of an alleged RIF was false, further shifting,

pretextual and discriminatory.

131. It is allegedly pretextual as Mr. Tullis was never written up, talked to or disciplined by Defendant about any claimed intoxication issue(s) while he was employed by Defendant.
132. It is also discriminatory and based on Mr. Tullis's age and/or sex as Defendant allegedly effectively replaced Mr. Tullis with and/or retained a substantially younger and/or female employee, including Payne and/or Vajgert, who, upon information and belief, allegedly had known ongoing intoxication issues, far more serious than anything Defendant can even allege about Mr. Tullis.
133. As a non-exclusive example, upon information and belief, Payne was allegedly convicted of an OVI ("operating vehicle under the influence") following an April 2022 company event in Akron, Ohio.
134. As another non-exclusive example, upon information and belief, Vajgert was retained by Defendant, despite having allegedly been involved in multiple serious incidents of misconduct. For example, upon information and belief, during January 2023, Vajgert allegedly while intoxicated at a customer event pushed a customer and caused such a disturbance that police were called to the scene. Moreover, upon and information and belief, despite the alleged severity of the incident, she was not terminated. Instead, she was placed on probation. Notably, upon information and belief, this was not the first such incident—upon information and belief, Defendant's Chief Commercial Officer had allegedly issued Vajgert a warning on January 28, 2021, following another alleged alcohol-related event the night before.
135. Upon information and belief, Payne allegedly continued to enable and permit Vajgert to

consume alcohol at customer-facing events, despite Vajgert allegedly being on probation and allegedly having a documented history of misconduct, including alleged prior warnings and a customer allegedly explicitly requesting her termination. Upon information and belief, this allegedly included drinking during the National Restaurant Association show in Chicago on May 19, 2023. Upon information and belief, a police report from that night allegedly documents both Payne and Vajgert as "HBD" (Had Been Drinking).

136. Upon information and belief, a substantially younger senior leader of Defendant was retained despite allegedly becoming visibly intoxicated at multiple customer events-including a June 13, 2023 event, where he allegedly was escorted to hotel room by Payne. This was at the same event that Payne allegedly reported Mr. Tullis for. Upon information and belief, an alleged similar incident involving the same substantially younger senior leader occurred at a separate customer event in Texas. Upon information and belief, no discipline was issued by Defendant for either incident.
137. Upon information and belief, numerous other examples exist whereby Defendant allegedly promoted alcohol and drinking at its events and spent considerable sums on alcohol despite allegedly claiming it was trying to cut waste or suddenly allegedly claiming it was outraged by Mr. Tullis' alleged consumption of alcohol, but not comparative or greater alcohol consumption by females or employees under forty or substantially younger.
138. Upon information and belief, both Payne and Vajgert were retained and/or one of them allegedly effectively replaced Mr. Tullis despite allegedly becoming being heavily intoxicated at other customer events, including at: a team meeting in South Carolina; an ISSA fall 2023 show; and a Montana customer fishing event during July 2023.

139. Upon information and belief, during August 2023, during a Defendant-sponsored fishing trip and dinner with a customer and the customer's family- a substantially younger employee of Defendant allegedly drank to excess and allegedly became offensive, rude, and aggressive in front of attendees, including children. Upon information and belief, Payne allegedly witnessed the behavior, as allegedly did another employee of Defendant. Despite the alleged inappropriate conduct and multiple internal witnesses, Payne allegedly failed to report this substantially younger employee to Defendant and/or no disciplinary action was taken by Defendant; yet upon information and belief, Payne allegedly reported Mr. Tullis for alleged conduct at a June 12, 2023 customer event-one month after it occurred and one month before the RIF.

**L. Defendant Further Failed to Transfer or Reassign Mr. Tullis, Unlike the Transfer/Reassignment of Under Forty and/or Substantially Younger and/or Female Employee(s)**

140. Upon information and belief, Defendant further discriminated against Mr. Tullis based on his age and/or sex when it failed to transfer and/or reassign Mr. Tullis and/or failed to allow Mr. Tullis the opportunity to transfer and/or be reassigned to one or more other open and/or created positions in lieu of being discharged pursuant to the claimed RIF, including an existing open position --Vice President National Accounts & Commercial Real Estate ("VPNA&CRE").

141. Upon information and belief, the VPNA&CRE position became open after Defendant discharged the prior substantially older VPNA&CRE employee holding the position via the claimed August 31, 2023 RIF.

142. Defendant did not even make Mr. Tullis aware of the open VPNA&CRE position, even

though Mr. Tullis was far more qualified, experienced and accomplished for this role than the under forty female who Defendant placed in this position.

143. Thus, Mr. Tullis was not given the same opportunity to transfer and/or be reassigned and/or be considered for one or more other job opportunities in Defendant's company or have a position created for Mr. Tullis that it afforded under forty and/or substantially younger and/or female employee(s).
144. Accordingly, upon information and belief, Defendant chose a claimed RIF justification as set forth above and elsewhere and/or allegedly claimed secret or non-existent RIF criteria for the invalid reason of actually terminating only Mr. Tullis in Foodservice sales, even though any such RIF criteria is neither believed to apply to Mr. Tullis nor neutrally applied to similarly situated under forty and/or substantially younger and/or female employees.
145. Rather, age and/or sex were the alleged reasons for Mr. Tullis's termination and decision not to transfer and/or reassign Mr. Tullis to another position and Mr. Tullis was allegedly effectively replaced by one or more similarly situated under forty and/or substantially younger and/or female employee.

**M. Alleged Retaliatory and Discriminatory "Smear Campaign"**

146. After Mr. Tullis retained counsel and complained by and through his counsel about discrimination to Defendant, upon information and belief, Defendant began allegedly retaliating against Mr. Tullis, aided and abetted by Payne, including by means of a "smear campaign".
147. In the alternative, the alleged "smear campaign" by Defendant was discriminatory and done to harass Mr. Tullis because of his gender and/or age.

148. For example, upon information and belief, Payne--and any other employee of Defendant-- at the alleged direction of and/or ratification by Defendant, allegedly disparaged Mr. Tullis to other employees and Mr. Tullis's customers at both Defendant and Mr. Tullis's subsequent employer.
149. This believed "smear campaign" allegedly included false claims to others that Mr. Tullis had intoxication issues from alcohol and engaged in other wrongdoing, including resulting from intoxication.
150. By way of non-exclusive examples, upon information and belief, Defendant allegedly claimed Mr. Tullis was intoxicated when he referred to his good friend as a leprechaun.
151. Thereafter, Defendant, by and through one or more of its employees, allegedly claimed Mr. Tullis was terminated due to his alcohol intoxication.
152. In this regard, upon information and belief, Payne allegedly told the General Manager ("GM") of a major client of Mr. Tullis's subsequent employer that Mr. Tullis during 2024 had engaged in "inappropriate and uncomfortable" conversations and/or behavior at dinner with employees of the foregoing major client and another important client of Mr. Tullis's subsequent employer, which was false.
153. Thereafter, Mr. Tullis attended a retirement dinner for another customer on January 9, 2025.
154. Upon information and belief, Defendant, by and through one or more of its employees, during a mid-January 2025 national sales meeting of a customer of Mr. Tullis's subsequent employer, allegedly communicated false statements to attendees that Mr. Tullis was drinking at the aforementioned retirement dinner "and was a mess".
155. The foregoing alleged false and derogatory comments along with all other false and/or



derogatory comments that Mr. Tullis is currently unaware of but hereafter discovers are hereinafter collectively referred to as the “smear campaign”.

**GENERAL ALLEGATIONS APPLICABLE TO EACH COUNT**

156. Defendant’s alleged actions and inactions complained of by Mr. Tullis in this Complaint were allegedly willful and wanton, voluntary, intentional, continuing, done continuously and constituted a continuing violation, knowingly and done with discriminatory and/or retaliatory animus and were engaged in by Defendant with knowledge of and in continuous violation of the above and below laws, knowledge that its conduct was prohibited by the above and below laws and in knowing or reckless disregard or indifference of the same and whether its conduct violated the above and below laws.
157. For each of Defendant’s alleged actions and inactions as set forth in this Complaint, Defendant directly and by and through its agents, management, supervisors, employees and/or representatives, allegedly directly and/or vicariously continuously engaged in the described acts and inactions with malice, intent, ill will, recklessness, reckless malfeasance, gross negligence and a willful and conscious disregard of Mr. Tullis’s protected rights that had a great probability of causing and did cause Mr. Tullis substantial harm and a conscious or reckless indifference or disregard to Mr. Tullis’s federally and state protected right to work without unlawful discrimination or retaliation and for such actions and/or inactions and willful conduct Defendant is liable to Mr. Tullis for punitive damages.
158. Defendant is liable on the basis of its own alleged actions and inactions and on the basis of *inter alia*, *respondeat superior* and strict liability. Defendant, through its supervisory and other employees, who acted at all material times set forth herein within the scope of their

employment with Defendant and in furtherance of its business, allegedly knew and should have known of the above and below unlawful conduct and failed to take all necessary preventive steps and immediate and appropriate corrective and/or remedial action, which is construed as condoning and ratifying the unlawful actions and inactions.

159. Regardless, Defendant is responsible for its alleged actions and inactions and the alleged actions and inactions of its employees, management, agents and supervisory employees regardless of whether the specific actions and inactions complained of were authorized or even forbidden by Defendant and regardless of whether Defendant knew or should have known of their occurrence even though Defendant allegedly did know of their occurrence.
160. Moreover, upon information and belief (1) Defendant allegedly engaged in continuing and continuous wrongful conduct and unlawful acts as set forth herein; (2) the injury to Mr. Tullis has accrued continuously; and (3) had Defendant at any time ceased its alleged wrongful conduct, further injury would have been avoided.

### **COUNT I**

#### **(Age Discrimination in Violation of the ADEA–Wrongful Termination/Discharge)**

161. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
162. Defendant has engaged in an industry affecting commerce and has employed twenty (20) or more employees for each working day in each of the twenty (20) or more calendar weeks in the then current and preceding calendar year.
163. Defendant at all material times was an employer within the meaning of the ADEA.
164. Mr. Tullis at all material times was an “individual” within the meaning of the ADEA.

165. Upon information and belief, as set forth above, Defendant terminated Mr. Tullis or discharged him pursuant to a claimed RIF that was discriminatory, and engaged in other adverse actions and inactions, including as is more fully set forth above, and adverse and disparate treatment of Mr. Tullis all due to Mr. Tullis's age and/or, upon information and belief, alleged actions, inactions and/or enacted policies that had an adverse and disparate impact on employees in the protected age class, including Mr. Tullis's age, each in continuous and continuing violation of, *inter alia*, Title VII, including as all set forth above.
166. Mr. Tullis (1) was at least 40 years old at the time of the discrimination; (2) was subjected to adverse employment actions and inactions, including termination; (3) was otherwise qualified for his position; and (4) was effectively replaced by a substantially younger employee and/or employee under forty and/or one or more under forty or substantially younger employees were treated more favorably.
167. Moreover, and/or in the alternative, if Mr. Tullis was terminated or discharged after being selected for a RIF, Mr. Tullis (1) was 40-years old or older at the time of his dismissal; (2) was discharged; (3) was qualified for his position; and (4) additional direct, circumstantial and/ or statistical evidence exists tending to indicate Defendant singled out Mr. Tullis for discharge because of his age.
168. Moreover, one or more comparable non-protected employees under forty or substantially younger were treated better than Mr. Tullis and were retained.
169. Furthermore, Mr. Tullis possessed qualifications superior to one or more under forty or substantially younger employees who were not discharged, including Payne.
170. Any claimed legitimate, nondiscriminatory justification by Defendant for the foregoing

adverse employment treatment, actions and inactions were mere pretext, including because they (1) have no basis in fact; (2) did not actually motivate Defendant's conduct; and/or (3) were insufficient to warrant the conduct.

171. As a direct and proximate result of Defendant's above and below willful and unlawful and continuous adverse actions and inactions and termination and/or discharge of Mr. Tullis because of his age, each in continuous and continuing willful violation of the ADEA, Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under the ADEA.

## **COUNT II**

**(Age Discrimination in Violation of Ohio law, including Ohio Rev. Code §4112.02 [A] and § 4112.052 – Wrongful Termination/Discharge)**

172. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
173. Mr. Tullis is and at all material times was a "person" as defined by Ohio Rev. Code §4112.01(A)(1).
174. Defendant is and at all material times was an "employer" within the meaning of Ohio Rev. Code §4112.01(A)(2).
175. As set forth above, Defendant's termination of Mr. Tullis and/or discharge pursuant to a discriminatory claimed RIF all due to Mr. Tullis's age was and is in continuous and continuing violation of, *inter alia*, Ohio law, including, but not limited to, Ohio Rev. Code §4112.02 [A] and § 4112.052.
176. As a direct and proximate result of Defendant's above and below willful and unlawful and continuous actions and inactions and termination of Mr. Tullis and/or discriminatory

discharge of Mr. Tullis because of his age, Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under Ohio law, including Ohio Rev. Code §4112.02 [A] and § 4112.052, in excess of \$25,000.

### **COUNT III**

#### **(Sex Discrimination in Violation of Title VII–Wrongful Termination/Discharge)**

177. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
178. Defendant is an “employer” as defined under Title VII as it engaged in an industry affecting commerce and has fifteen or more employees for each working day in each of twenty (20) or more calendar weeks in the current and preceding year.
179. Mr. Tullis was an at-will employee of Defendant and an individual within the meaning of Title VII.
180. As set forth above, Defendant terminated Mr. Tullis or discharged him pursuant to a claimed RIF that was discriminatory, and engaged in other adverse actions and inactions, including as is more fully set forth above, and adverse and disparate treatment of Mr. Tullis all due to Mr. Tullis’s sex, male, and/or, upon information and belief, alleged actions, inactions and/or enacted policies that had an adverse and disparate impact on male employees, including Mr. Tullis, based on their sex, male, each in continuous and continuing violation of, *inter alia*, Title VII, including as all set forth above.
181. Mr. Tullis (1) is male; (2) was subject to adverse employment actions, including termination and/or discharge pursuant to a claimed RIF; (3) was qualified for his position and performed

it well; and (4) was effectively replaced by and/or received different and less favorable treatment than one or more similarly situated female employee(s).

182. Moreover, and/or in the alternative, if Mr. Tullis was discharged pursuant to a RIF(1) Mr. Tullis is male; (2) Mr. Tullis was qualified for his position and performed it well; (3) Mr. Tullis was discharged in a claimed RIF; and (4) additional direct, circumstantial, or statistical evidence exists tending to indicate that Defendant singled out Mr. Tullis for discharge because of his sex, male.

183. Furthermore, upon information and belief, Mr. Tullis additionally suffered sex discrimination as a result of Defendant's alleged discriminatory diversity, equity and inclusion, or DEI, policy and/or policies.

184. Upon information and belief, Defendant allegedly conducted *GOJO's Women in Management* program retreat, allegedly held weeks after its third RIF, for women employees only; but failed to have any such similar retreat for male employees.

185. Moreover and/or in the alternative, if it is still necessary following the upcoming United States Supreme Court holding in *Ames v. Ohio Department of Youth Services* to show via a "reverse discrimination theory", upon information and belief, additional "background circumstances" exist to support the suspicion that Defendant is that unusual employer who discriminates against the majority, male(s), including, but not limited to: evidence that, *inter alia*, a member of the relevant minority group [here, female(s)] made the employment decision at issue or with statistical evidence showing a pattern of discrimination by Defendant against males and Defendant treated Mr. Tullis and male employees differently who were similarly situated but were not members of the protected class, female.

186. Moreover, upon information and belief, one or more comparable non-protected and/or female employees were treated better than Mr. Tullis and were retained.
187. Furthermore, Mr. Tullis allegedly possessed qualifications superior to one or more female employees who were not discharged, including Payne.
188. Any claimed legitimate, nondiscriminatory justification for the foregoing adverse employment actions and inactions were mere pretext, including because they (1) have no basis in fact; (2) did not actually motivate Defendant's conduct; and/or (3) were insufficient to warrant the conduct.
189. As a direct and proximate result of Defendant's above and below willful and unlawful and continuous adverse actions and inactions and termination and/or discharge of Mr. Tullis because of his sex, male, each in continuous and continuing willful violation of the violation of Title VII, Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under Title VII.

#### **COUNT IV**

**(Sex Discrimination in Violation of Ohio law, including Ohio Rev. Code §4112.02 [A] and § 4112.052 –Wrongful Termination/Discharge)**

190. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
191. As set forth above, Defendant's termination of Mr. Tullis or elimination of his position in a claimed RIF that was discriminatory all due to Mr. Tullis's sex, male, was and is in continuous and continuing violation of, *inter alia*, Ohio law, including Ohio Rev. Code §4112.02 [A] and § 4112.052.
192. As a direct and proximate result of Defendant's above and below willful and unlawful and

continuous actions and inactions and termination of Mr. Tullis and/or discharge of Mr. Tullis because of his sex, Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under Ohio law, including Ohio Rev. Code §4112.02 [A] and § 4112.052, in excess of \$25,000.

**COUNT V**

**(Age Discrimination in Violation of the ADEA– Failure to Transfer)**

193. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
194. Upon information and belief, following Mr. Tullis's termination, Payne--a then 36-year-old female who allegedly previously reported to Mr. Tullis--was in the alternative transferred into an open VPNA&CRE position by Defendant that included many of Mr. Tullis's former responsibilities.
195. Despite Mr. Tullis's superior qualifications and tenure for this position--for example, many of the VPNA&CRE responsibilities and business units included national accounts, Foodservice and Retail B2B that Mr. Tullis created, built and grew through decades of leadership and success--Defendant did not offer Mr. Tullis the opportunity to transfer to this or any other open position for which he was superiorly qualified, including in lieu of termination.
196. Defendant violated the ADEA when it transferred or reassigned one or more other displaced employees under the age of forty or substantially younger than Mr. Tullis instead of terminating or discharging them pursuant to the RIF, but did not transfer Mr. Tullis into a new position or allow Mr. Tullis the opportunity to transfer all because of his age.



197. Mr. Tullis 1) was at the time of his termination and/or discharge and is a member of a protected class based on his age; 2) at the time of his termination and/or the claimed elimination of his position, he was qualified for one or more other available and/or open position(s) within Defendant; 3) Defendant did not offer such position(s) to Mr. Tullis; and 4) at least one similarly-situated under forty and/or substantially younger employee who is not a member of the protected class, e.g., Payne, was offered the opportunity to and did transfer to an available position.
198. Upon information and belief, other direct, indirect, or circumstantial evidence supporting an inference of discrimination exists.
199. Upon information and belief, Defendant engaged in other adverse actions and inactions and adverse and disparate treatment of Mr. Tullis all due to Mr. Tullis's age and/or, upon information and belief, alleged actions, inactions and/or enacted policies that had an adverse and disparate impact on employees in the protected age class, including Mr. Tullis's age, each in continuous and continuing violation of, *inter alia*, the ADEA.
200. Any claimed legitimate, nondiscriminatory justification for the foregoing adverse employment action(s) and inaction(s) were mere pretext, including because they (1) have no basis in fact; (2) did not actually motivate Defendant's conduct; and/or (3) were insufficient to warrant the conduct.
201. As a direct and proximate result of Defendant's above and below willful and unlawful and continuous adverse actions and inactions and failure to transfer or reassign Mr. Tullis because of his age, each in continuous and continuing willful violation of the violation of the ADEA, Mr. Tullis was caused to and did suffer the damages more fully specified below

and Mr. Tullis is entitled to all damages and remedies available under the ADEA.

**COUNT VI**

**(Age Discrimination in Violation of Ohio law, including Ohio Rev. Code §4112.02 [A] and § 4112.052 – Failure to Transfer)**

202. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
203. As set forth above, Defendant's failure to transfer or reassign Mr. Tullis because of his age violates Ohio law, including Ohio Rev. Code §4112.02 [A] and § 4112.052 .
204. As a direct and proximate result of Defendant's above and below willful and unlawful and continuous adverse actions and inactions and failure to transfer and/or reassign Mr. Tullis because of his age, each in continuous and continuing willful violation of Ohio law, Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under available under Ohio law, including Ohio Rev. Code §4112.02 [A] and § 4112.052, in excess of \$25,000.

**COUNT VII**

**(Sex Discrimination in Violation of Title VII–Failure to Transfer)**

205. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
206. Defendant violated Title VII when it, upon information and belief, allegedly transferred or reassigned at least one displaced female employee but did not transfer and/or reassign Mr. Tullis to another open position or allow Mr. Tullis the opportunity to so transfer and/or reassign, including in lieu of termination, all because of his sex, male.
207. Mr. Tullis, upon information and belief: 1) was at the time of his termination and/or

discharge and is a male; 2) at the time of his termination and/or the claimed elimination of his position, he was qualified for other available and/or open position(s) within Defendant; 3) Defendant did not offer such position(s) to Mr. Tullis; and 4) at least one similarly-situated female employee who is not a member of the protected class, e.g., Payne, was offered the opportunity to and did transfer to an available position.

208. Upon information and belief, other direct, indirect, or circumstantial evidence supporting an inference of discrimination exists.
209. Moreover and/or in the alternative, if it is still necessary following the upcoming United States Supreme Court holding in *Ames v. Ohio Department of Youth Services* to show via a “reverse discrimination theory”, upon information and belief, additional “background circumstances” exist to support the suspicion that Defendant is that unusual employer who discriminates against the majority, male(s), including, but not limited to: evidence that a member of the relevant minority group [here, female(s)] made the employment decision at issue or with statistical evidence showing a pattern of discrimination by Defendant against males and Defendant treated differently Mr. Tullis and male employees who were similarly situated but were not members of the protected class.
210. Upon information and belief, Defendant allegedly engaged in other adverse actions and inactions and adverse and disparate treatment of Mr. Tullis all due to Mr. Tullis’s sex, male, and/or, upon information and belief, alleged actions, inactions and/or enacted policies that had an adverse and disparate impact on employees in the protected sex class, including Mr. Tullis’s sex, each in continuous and continuing violation of, *inter alia*, Title VII.
211. Any claimed legitimate, nondiscriminatory justification for the foregoing adverse

employment action(s) and inaction(s) were mere pretext, including because they (1) have no basis in fact; (2) did not actually motivate Defendant's conduct; and/or (3) were insufficient to warrant the conduct.

212. As a direct and proximate result of Defendant's above and below willful and unlawful and continuous adverse actions and inactions and failure to transfer and/or reassign Mr. Tullis because of his sex, each in continuous and continuing willful violation of the violation of Title VII, Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under Title VII.

### **COUNT VIII**

**(Sex Discrimination in Violation of Ohio law, including Ohio Rev. Code §4112.02 [A] and § 4112.052 –Failure to Transfer)**

213. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
214. As set forth above, Defendant's failure to transfer or reassign Mr. Tullis because of his sex, male, violates Ohio law, including Ohio Rev. Code §4112.02 [A] and § 4112.052.
215. As a direct and proximate result of Defendant's above and below willful and unlawful and continuous adverse actions and inactions and failure to transfer and/or reassign Mr. Tullis because of his sex, each in continuous and continuing willful violation of the violation of Ohio law, Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under Ohio law, including Ohio Rev. Code §4112.02 [A] and § 4112.052, in excess of \$25,000.

**COUNT IX**

**(Age Discrimination in Violation of the ADEA and Ohio law, including Ohio Rev. Code §4112.02 [A] and § 4112.052 –“Smear Campaign”/Disparagement/Comparative Harassment)**

216. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
217. The ADEA and Ohio Rev. Code §4112.02 [A] and § 4112.052 protect employees as well as former employees and individuals from postemployment actions.
218. Upon information and belief, Defendant, by and through its employees, allegedly engaged in the above-described demoralizing “smear campaign”, disparagement campaign and comparative harassment campaign against Mr. Tullis, including by disparaging Mr. Tullis to customers of his subsequent employer following his termination that adversely affected Mr. Tullis’s subsequent work environment, that Defendant did not engage in against comparable employees or former employees under the age of 40 or substantially younger than Mr. Tullis, including those who became intoxicated and engaged in inappropriate behavior, including related to intoxication.
219. Defendant allegedly engaged in this “smear campaign” and disparaging and comparative harassment due to Mr. Tullis’s age.
220. Upon information and belief, Defendant’s alleged smear-campaign allegedly continued after Mr. Tullis’s termination and/or discharge.
221. Upon information and belief, Defendant allegedly failed to take reasonable steps to prevent or stop the alleged “smear campaign” and harassment and/or to restore Mr. Tullis’ reputation and/or to change the perception created.

222. Upon information and belief (1) Mr. Tullis at the time of the alleged harassment was older than forty and was and is a member of a protected class; (2) Mr. Tullis was subject to unwelcome comparative harassment, including post-employment by virtue of Defendant's alleged "smear campaign"; (3) the comparative harassment was based on/and or because of Mr. Tullis's age; (4) the harassment was sufficiently severe or pervasive, including to alter the conditions of Mr. Tullis' employment and/or post-termination employment, to unreasonably interfere with his work and post-termination work performance and/or to create an abusive work environment and/or post-termination work environment and the harassment affected Mr. Tullis by creating an objectively intimidating, hostile, or offensive work environment and/or post-termination work environment such that a reasonable person would find it abusive or hostile ; and (5) Defendant knew or should have known about the alleged harassing conduct but allegedly failed to take and/or implement reasonable, prompt, appropriate and/or proper corrective action and failed to reasonably act and/or directed and participated in it and is otherwise liable for it, including directly and/or vicariously.
223. Any claimed legitimate, nondiscriminatory justification for the foregoing adverse employment actions and inactions were mere pretext, including because they (1) have no basis in fact; (2) did not actually motivate Defendant's conduct; and/or (3) were insufficient to warrant the conduct.
224. As a direct and proximate result of Defendant's alleged above and below willful and unlawful and continuous adverse actions and inactions and "smear campaign" and disparaging and comparative harassment against Mr. Tullis because of his age, each in continuous and continuing willful violation of the ADEA, Mr. Tullis was caused to and did

suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under the ADEA.

225. Moreover, as a direct and proximate result of Defendant's above and below alleged willful and unlawful and continuous adverse actions and inactions and "smear campaign" and disparaging and comparative harassment against Mr. Tullis because of his age, each in continuous and continuing willful violation of Ohio law, including Ohio Rev. Code §4112.02 [A] and § 4112.052, Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under Ohio law, including Ohio Rev. Code §4112.02[A] and § 4112.052, in excess of \$25,000.

**COUNT X**

**(Sex Discrimination in Violation of Title VII and Ohio law,  
including Ohio Rev. Code § 4112.02 [A] and § 4112.052 – "Smear  
Campaign"/Disparagement/Comparative Harassment)**

226. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
227. Title VII and Ohio Rev. Code §4112.02 [A] and § 4112.052 protect employees as well as former employees and individuals from discriminatory postemployment actions.
228. Upon information and belief, Defendant, by and through its employees, allegedly engaged in the above-described demoralizing "smear campaign", disparagement campaign and comparative harassment campaign against Mr. Tullis, including following his termination, that Defendant did not engage in against comparative female employees or former female employees, including those who became intoxicated and engaged in inappropriate behavior, including related to intoxication.

229. Defendant allegedly engaged in this “smear campaign” and disparaging and comparative harassment due to Mr. Tullis’s sex, male.
230. Upon information and belief (1) Mr. Tullis at the time of the alleged harassment was and is male and a member of a protected class; (2) Mr. Tullis was allegedly subject to unwelcome comparative harassment, including post-employment by virtue of the “smear campaign”; (3) the alleged comparative harassment was based on/and or because of his sex, male; (4) the alleged harassment was sufficiently severe or pervasive, including to alter the conditions of Mr. Tullis’ employment and/or post-termination employment, to unreasonably interfere with his work and post-termination work performance and/or allegedly to create an abusive work environment and/or post-termination work environment and the alleged harassment affected Mr. Tullis by creating an objectively intimidating, hostile, or offensive work environment and/or post- termination work environment such that a reasonable person would find it abusive or hostile; and (5) Defendant knew or should have known about the alleged harassing conduct but allegedly failed to take and/or implement reasonable, prompt, appropriate and/or proper corrective action and failed to reasonably act and/or directed and participated in it and is otherwise liable for it, including directly and/or vicariously.
231. Any claimed legitimate, nondiscriminatory justification for the foregoing adverse employment actions and inactions were mere pretext, including because they (1) have no basis in fact; (2) did not actually motivate Defendant’s conduct; and/or (3) were insufficient to warrant the conduct.
232. As a direct and proximate result of Defendant’s above and below willful and unlawful and continuous adverse actions and inactions and alleged “smear campaign” and disparaging and



comparative harassment against Mr. Tullis because of his sex, male, each in continuous and continuing willful violation of Title VII, Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under Title VII.

233. Moreover, as a direct and proximate result of Defendant's above and below willful and unlawful and continuous adverse actions and inactions and alleged "smear campaign" and disparaging and comparative harassment against Mr. Tullis because of his sex, male, each in continuous and continuing willful violation of Ohio law, including Ohio Rev. Code § 4112.02 [A] and § 4112.052, Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under Ohio law, including Ohio Rev. Code § 4112.02[A] and § 4112.052, in excess of \$25,000.

### **COUNT XI**

**(Retaliation in Violation of the ADEA, Title VII and Ohio law, including Ohio Rev. Code § 4112.02 [I] and § 4112.052—"Smear Campaign"/ Disparagement/ Comparative Harassment)**

234. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
235. This Count is in the alternative to the claims set forth in Counts IX and X.
236. The ADEA's, Title VII's and Ohio Rev. Code § 4112.02 [I] and § 4112.052's anti-retaliation provisions provides it shall be an unlawful employment practice for an employer to discriminate or retaliate against any of its employees because the employee has engaged in one or more protected activities, including opposing or complaining about any practice made an unlawful employment practice by the foregoing.

237. These foregoing laws protects employees as well as former employees from discriminatory and retaliatory postemployment actions.
238. Indeed, employers cannot retaliate against employees without repercussion as long as they fire them first.
239. Upon information and belief, after Mr. Tullis retained counsel and complained by and through his counsel about discrimination to Defendant, Defendant and/or certain employee(s), including allegedly at the direction of or on behalf of Defendant, allegedly began to disparage and conduct a retaliatory “smear campaign” against Mr. Tullis designed to destroy and shatter Mr. Tullis’s reputation and “cancel” him in his industry and/or to discredit his discrimination claims.
240. Upon information and belief, Defendant allegedly did not engage in a demoralizing “smear campaign” against employees who did not retain counsel and complain about discrimination, including such alleged intoxicated employees, including such employees who allegedly became intoxicated and/or engaged in related behavior, including related to intoxication.
241. Thus, Mr. Tullis engaged in protected activities when he hired counsel and directed one or more of them to complain about and oppose discrimination, and eventually to file a charge of discrimination with the EEOC and OCRC, specifically of age and sex discrimination and retaliation, and other unlawful conduct, which Mr. Tullis’ reasonably believed to be unlawful.
242. Upon information and belief, after Mr. Tullis engaged in such protected activities, Defendant allegedly subjected Mr. Tullis to post-employment adverse employment actions, including but not limited to allegedly engaging in a retaliatory “smear campaign” to cast Mr. Tullis in

a derogatory and false light, including to other employees, clients of Defendant and Mr. Tullis's subsequent employer, and Mr. Tullis's friends.

243. A reasonable employee would find the challenged action materially adverse and would dissuade a reasonable employee from engaging counsel and making or supporting a complaint and/or opposition to discrimination.
244. Mr. Tullis's protected activities was the 'but for' cause of Defendant's retaliatory conduct.
245. If not for Mr. Tullis's protected activities, Defendant's alleged retaliation would not have occurred.
246. This alleged harassing and retaliatory conduct was continuous and, upon information and belief, is continuing.
247. Thus, upon information and belief (1) Mr. Tullis engaged in activity protected by the ADEA, Title VII and/or Ohio law; (2) his exercise of such protected activity was known by Defendant; (3) thereafter, Defendant allegedly took post-employment adverse employment actions that were 'materially adverse' to Mr. Tullis; and (4) a causal connection existed between the protected activit(ies) and the post-employment adverse employment actions that were 'materially adverse' to Mr. Tullis.
248. Thus, Mr. Tullis was allegedly subjected to severe or pervasive retaliatory harassment by Defendant and its employees and/or supervisor(s).
249. Any claimed legitimate, non-retaliatory reason for Defendant's alleged actions is a pretext or cover up for unlawful retaliation.
250. As a direct and proximate result of Defendant's above and below alleged willful and unlawful and continuous adverse retaliatory actions, in continuous and continuing willful

violation of the ADEA, Title VII and Ohio law, including § 4112.02 [I] and § 4112.052, Mr. Tullis was caused to and did suffer the damages more fully specified below, including severe emotional distress and pain, humiliation, embarrassment, belittlement, frustration and mental anguish, and Mr. Tullis is entitled to all damages and remedies available under the ADEA, Title VII and Ohio law, including Ohio Rev. Code § 4112.02 [I] and § 4112.052, in excess of \$25,000.

## **COUNT XII**

### **(Promissory Estoppel)**

251. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
252. Promissory estoppel is an exception to the employment-at-will doctrine.
253. Joe Kanfer, whose Uncle was the founder of Defendant, was Defendant's Chairman and then Chairman Emeritus, and repeatedly promised Mr. Tullis while acting as Chairman as well as Chairman Emeritus (during which time he retained decision-making authority) and a member of Defendant's Board of Directors that Mr. Tullis would continue to be employed by Defendant up until Mr. Tullis turned Mr. Kanfer's then-current age.
254. Mr. Kanfer last made this promise when Mr. Kanfer was aged seventy-three, promising Mr. Tullis that he would continue to be employed by Defendant up until the time Mr. Tullis turned seventy-three.
255. Mr. Tullis trusted Mr. Kanfer's alleged promises completely and Mr. Tullis remained loyal to Defendant for thirty-three years.
256. As a result, Mr. Tullis turned down offers of employment from others, including Bunzl

suppliers.

257. Thus, Defendant made Mr. Tullis an alleged clear and unambiguous promise and representation that Mr. Tullis would have continuing employment until Mr. Tullis turned seventy three on Mr. Tullis's birthdate.
258. Defendant reasonably and foreseeably expected and should have expected these alleged promises to induce action and forbearance and reliance on the part of Mr. Tullis.
259. The aforementioned alleged promises did in fact induce Mr. Tullis to reasonably rely upon them in taking action and forbearance, to wit: Mr. Tullis decided not to seek other employment and/or accept other employment opportunities and remained loyal to Defendant.
260. Nevertheless, in contravention to these promise(s), Defendant without lawful justification terminated Mr. Tullis on August 31, 2023 at age 58.
261. Injustice can only be avoided by enforcement of Defendant's alleged promises.
262. As a direct and proximate result of Defendant's actions, Mr. Tullis has suffered damages and injuries and is entitled to judgment for all damages available to him under Ohio law, in excess of \$25,000.

### **COUNT XIII**

**(Age Discrimination in Violation of the ADEA and Ohio law,  
including Ohio Rev. Code § 4112.02 [A] and § 4112.052--  
Discriminatory Offer and Denial of Equal Severance Benefits)**

263. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
264. On the same day it terminated Mr. Tullis, Defendant offered Mr. Tullis a "Transition Agreement and General Release" (the "severance agreement").

265. Defendant through its severance agreement provided Mr. Tullis a period of forty-five (45) days within which to consider signing the severance agreement, as required by the OWBPA.
266. Defendant through its severance offer also offered consideration required by the OWBPA, in his case sixty-six weeks of salary.
267. However, Defendant's severance agreement stated that the severance payments to Mr. Tullis would end once he became re-employed.
268. Following Mr. Tullis' termination, he obtained re-employment with another employer on or about October 2, 2023—less than forty-five (45) days from the time he received the severance agreement offer and Defendant at that time of Mr. Tullis's re-employment ceased offering Mr. Tullis the prior offered consideration.
269. Defendant's severance agreement and denial of the severance consideration was discriminatory based on Mr. Tullis' age in a number of ways.
270. *Violation of the Older Workers Benefit Protection Act.* First, Defendant's severance offer included a clause that the severance payments expired upon Mr. Tullis's re-employment and required Mr. Tullis to not work for sixty-six (66) weeks to obtain its full benefits.
271. Defendant allegedly steadfastly required this clause that unlawfully terminated severance payments upon Mr. Tullis's rehire while, upon information and belief, at least one under forty or substantially younger discharged employee, including via a RIF, received full severance payments despite re-employment.
272. Defendant allegedly advised it could not and would not change its severance agreement it offered to Mr. Tullis, including its language terminating severance payments upon Mr. Tullis's re-employment.

273. After Mr. Tullis obtained re-employment, and nearly two weeks before the requisite forty-five day consideration period lapsed, Defendant claimed the terms of its severance agreement terminated any and all severance payments and consideration Mr. Tullis would have received had he signed it.
274. Thus, Defendant's severance agreement beginning October 2, 2023 allegedly violated the OWBPA, requiring appropriate consideration in addition to anything of value to which Mr. Tullis already was entitled.
275. At the same time, Defendant, when by the terms of its alleged discriminatory severance offer did not allow Mr. Tullis the entire forty-five days to consider the original severance, which had been withdrawn when Mr. Tullis became re-employed, further violated the OWBPA.
276. If effect, Defendant's alleged discriminatory language in its severance offer, which allegedly violated the OWBPA, effectively prevented Mr. Tullis from being able to agree to the severance agreement as its requisite consideration was removed approximately fourteen days prior to the end of the requisite forty-five day consideration period.
277. Defendant thereafter withdrew its severance offer which had by then by its terms already terminated any severance payments.
278. Thus, Defendant allegedly wrongfully denied Mr. Tullis severance pay, in violation of the OWBPA, which applied because of Mr. Tullis's age.
279. *Disparate Treatment and/or Disparate Impact and/or Proxy Discrimination and/or Overdiscrimination.* Second, Defendant's clause that ended severance payments upon re-employment is allegedly an employment policy or practice that allegedly had a disparate impact on Mr. Tullis and employees in Mr. Tullis's age subgroup.

280. That is, at Mr. Tullis's age, he was too young to retire and needed to work.
281. Upon information and belief, unlike employees older than Mr. Tullis who were ready to retire, or those under forty or older than forty but substantially younger than Mr. Tullis who had many more years of future career opportunities ahead of them, if Mr. Tullis was to take off sixty-six weeks in order to receive the full severance consideration offered, Mr. Tullis believes it would constitute an employment gap of such significance that it would be "career suicide" and result in, *inter alia*, "black mark damages" and Mr. Tullis would essentially become unemployable after the severance ended—and if Mr. Tullis signed the severance agreement he would have been allegedly forced into *de facto* early retirement well before the time he would have otherwise retired.
282. Thus, is allegedly and/or Mr. Tullis believes he was additionally in a subgroup of employees in his age group who were uniquely adversely affected and discriminated against based on their age by the clause terminating severance payments upon rehire.
283. Accordingly, upon information and belief, Defendant's termination of severance payments upon rehire clause and policy allegedly unduly and adversely affected and impacted older workers in Mr. Tullis's age category/subgroup who were/are not ready to retire and had an adverse and disparate impact upon Mr. Tullis and employees in his age category/subgroup due to his and their age.
284. Thus, this claimed facially neutral policy, i.e., terminating severance payments upon Mr. Tullis's re-employment, allegedly had a disparate impact based on Mr. Tullis age.
285. Furthermore, as Mr. Tullis was allegedly treated less favorably based on Defendant's claimed facially neutral policy that is allegedly correlated with a protected characteristic, Mr. Tullis'



age, Mr. Tullis allegedly suffered disparate treatment and/or disparate impact, including proxy discrimination and/or overdiscrimination.

286. *Disparate Treatment: at Least One Substantially Younger and/or Under Forty Employee Simultaneously Collected Severance Payments After Being Re-Employed.* Third, upon information and belief, although Defendant allegedly would not remove the clause in its severance offer to Mr. Tullis terminating severance payments upon his rehire, Defendant nevertheless allegedly paid the full severance of at least one laid-off under forty and/or substantially younger employee despite being re-employed, which Defendant allegedly knew or should have known, just as, upon information and belief, it allegedly tracked Mr. Tullis's post-termination re-employment.
287. Upon information and belief, any claim by Defendant that it was unaware of any other employee allegedly simultaneously working while continuing to collect severance was, allegedly, at best, "conscious ignorance" or "willful blindness" where Defendant allegedly chose to "look the other way".
288. Thus, upon information and belief, Defendant's alleged unyielding and mandatory requirement for Mr. Tullis that his severance payments had to stop upon his re-employment was additionally allegedly discriminatory to Mr. Tullis based on his age (including disparate treatment) and was allegedly doled out by Defendant in a discriminatory fashion and denied Mr. Tullis an employment benefit it allegedly afforded under forty and/or substantially younger employees who it laid off.
289. The ADEA and Ohio employment laws prohibit employers from discriminating "against any individual with respect to his or her compensation, terms, conditions, or privileges of

employment, because of such individual's age." 29 U.S.C. § 623(a)(1).

290. Upon information and belief: (1) Mr. Tullis is in a protected class due to his age; (2) had satisfactory job performance; (3) suffered adverse employment actions, i.e., Defendant would no longer offer his earlier offered severance pay allegedly because it claimed he became re-employed ; and (4) at least one similarly-situated employee under forty years old and/or substantially younger and outside Mr. Tullis's protected class allegedly received more favorable treatment because of that employee's age and was able to both become re-employed and collect full severance.
291. As a direct and proximate result of Defendant's above and below willful and unlawful and continuous adverse actions and inactions and offering of a less favorable severance package because of Mr. Tullis's age, in continuous and continuing willful violation of the violation of the ADEA and Ohio law, including Ohio Rev. Code § 4112.02 [A] and § 4112.052, Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under the ADEA and Ohio law, including Ohio Rev. Code §4112.02 [A] and § 4112.052, in excess of \$25,000.

#### **COUNT XIV**

**(Sex Discrimination in Violation of Title VII and Ohio law, including Ohio Rev. Code § 4112.02 [A] and § 4112.052--Discriminatory Offer and Denial of Equal Severance Benefits)**

292. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
293. Upon information and belief, although Defendant allegedly would not remove the clause in its severance offer to Mr. Tullis terminating severance payments to Mr. Tullis upon his

rehire, Defendant nevertheless allegedly paid the full severance of at least one laid off female employee despite and after her being re-employed, which Defendant allegedly knew or should have known, just as, upon information and belief, it allegedly tracked Mr. Tullis's post-termination employment.

294. Upon information and belief, any claim by Defendant that it was unaware of any other female employee allegedly simultaneously working while continuing to collect severance was, allegedly, at best, "conscious ignorance" or "willful blindness" where Defendant allegedly chose to "look the other way".
295. Thus, upon information and belief, Defendant's alleged unyielding and mandatory requirement for Mr. Tullis that his severance payments had to stop upon his re-employment was additionally allegedly discriminatory to Mr. Tullis based on his sex (including disparate treatment), male, and was allegedly doled out by Defendant in a discriminatory fashion and denied Mr. Tullis an employment benefit it allegedly afforded at least one female employees who it laid off.
296. Title VII and Ohio Rev. Code § 4112.02 [A] and § 4112.052 prohibit an employer from "discriminat[ing] against any individual with respect to his (or her) compensation, terms, conditions, or privileges of employment, because of such individual's sex.
297. Upon information and belief: (1) Mr. Tullis is in a protected class due to his sex, male; (2) had satisfactory job performance; (3) suffered adverse employment actions, i.e., termination of his prior offer of severance based on his re-employment; and (4) at least one similarly-situated female employee allegedly received more favorable treatment, i.e., full severance despite being re-employed, because of her sex, female.

298. As a direct and proximate result of Defendant's above and below willful and unlawful and continuous adverse actions and inactions and offering of a less favorable severance package because of Mr. Tullis's sex, male, in continuous and continuing willful violation of the violation of Title VII and Ohio law, including Ohio Rev. Code § 4112.02 [A] and § 4112.052, Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under Title VII and Ohio law, including Ohio Rev. Code § 4112.02 [A] and § 4112.052, in excess of \$25,000.

### **COUNT XV**

**(Retaliation in Violation of the ADEA, Title VII and Ohio law, including Ohio Rev. Code § 4112.02 [I] and § 4112.052—Retaliatory Offer and Denial of Equal Severance Benefits )**

299. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.

300. This Count is in the alternative to the claims set forth in Counts XIII and XIV.

301. Defendant's severance offer included a clause that the severance payments expired upon Mr. Tullis's re-employment and required Mr. Tullis to not work for 66 weeks to obtain its full benefits.

302. Upon information and belief, Defendant offered Mr. Tullis an alleged discriminatory severance agreement which it withdrew and allegedly steadfastly required a clause that unlawfully terminated severance payments upon Mr. Tullis's rehire while allowing at least two other former employees who did not hire counsel and complain about discrimination full severance payments despite re-employment.

303. Upon information and belief, after Mr. Tullis retained counsel and, by and through counsel,

complained about discrimination, Defendant advised it could not and would not change its severance agreement it offered to Mr. Tullis, including its language terminating severance payments upon Mr. Tullis's re-employment.

304. Moreover, Defendant then allegedly refused to pay the consideration offered and paid to others who did not retain counsel and complain about discrimination or to him before he retained counsel and complained about discrimination.
305. Thus, after Mr. Tullis retained counsel and complained about discrimination and prior to the requisite forty-five (45) day consideration period, Defendant withdrew its requisite consideration set forth in the severance offer, effectively keeping open its severance offer but without the prior severance payments or consideration in addition to anything of value to which Mr. Tullis already was entitled and, regardless, Defendant withdrew its severance offer.
306. Upon information and belief, although Defendant allegedly would not remove the clause in its severance offer to Mr. Tullis terminating severance payments to Mr. Tullis upon his rehire, Defendant nevertheless allegedly paid the full severance of at least two other laid-off employees who allegedly did not retain counsel and complain about discrimination, which Defendant allegedly knew or should have known, just as, upon information and belief, it allegedly tracked Mr. Tullis's post-termination employment.
307. Any claim by Defendant that it was unaware of these other employees both obtaining new employment while collecting severance was, at best, alleged "conscious ignorance" or "willful blindness" where Defendant allegedly chose to "look the other way" .
308. Thus, upon information and belief, Defendant's unyielding and mandatory requirement for

Mr. Tullis that severance payments stop upon his re-employment was allegedly retaliatory for Mr. Tullis engaging in protected activities as set forth above and was allegedly doled out by Defendant in a retaliatory fashion and denied Mr. Tullis an employment benefit it allegedly afforded other laid off employees who did not retain counsel and complain about discrimination.

309. Thus (1) Mr. Tullis engaged in activity protected by the ADEA, Title VII and Ohio Rev. Code § 4112.02 [I] and § 4112.052; (2) Mr. Tullis's exercise of such protected activity was known by Defendant; (3) thereafter, Defendant took an action that was 'materially adverse' to Mr. Tullis, i.e., terminated its previously offered severance consideration; and (4) a causal connection existed between the protected activity and the materially adverse action.
310. Any claimed legitimate, non-retaliatory reason for Defendant's actions is alleged pretext to cover up unlawful retaliation.
311. The alleged unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of Defendant.
312. As a direct and proximate result of Defendant's above and below alleged willful and unlawful and continuous adverse actions and inactions and offering of a less favorable severance package, allegedly in retaliation because Mr. Tullis engaged in protected activities, each in alleged continuous and continuing willful violation of the violation of the ADEA, Title VII and Ohio law, including § 4112.02 [I] and § 4112.052 , Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under the ADEA, Title VII and Ohio law, including Ohio Rev. Code § 4112.02 [I] and § 4112.052, in excess of \$25,000.

**COUNT XVI**

**(Intentional Infliction of Emotional Distress)**

313. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
314. Upon information and belief, Defendant's conduct allegedly included, *inter alia*, a discriminatory termination and/or discharge pursuant to a claimed RIF, discriminatory failure to transfer and/or reassign, a discriminatory or retaliatory "smear campaign" and a discriminatory or retaliatory refusal or denial of severance benefits.
315. Mr. Tullis suffered severe emotional distress as a result of the foregoing.
316. Defendant is liable for its own actions and inactions and, under the doctrine of *respondeat superior*, Defendant is also vicariously liable for its employee(s)'s intentional infliction of emotional distress.
317. Upon information and belief (1) Defendant allegedly intended through its, *inter alia*, discriminatory wrongful termination and/or discharge, discriminatory failure to transfer or reassign, discriminatory or retaliatory "smear campaign" and discriminatory or retaliatory unequal severance offers to cause emotional distress or allegedly knew or should have known that its actions would result in serious emotional distress to Mr. Tullis; (2) Defendant's alleged foregoing actions were so extreme and outrageous as to go beyond all possible bounds of decency and was such that it can be considered as "utterly intolerable in a civilized community"; (3) Defendant's foregoing actions were the proximate cause of Mr. Tullis's psychic injury; and (4) Mr. Tullis's mental anguish and emotional distress was and is serious and of such a nature that no reasonable person could be expected to endure it.

318. As a direct and proximate result of Defendant's above alleged willful and unlawful and continuous adverse actions and inactions, Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under Ohio law, in excess of \$25,000.

## **COUNT XVII**

### **(Invasion of Privacy — False Light)**

319. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
320. Upon information and belief, Defendant, directly and/or by and through one or more of its employees, through its alleged discriminatory or retaliatory "smear campaign", gave publicity to untrue matters concerning Mr. Tullis that placed Mr. Tullis before the public in a false light and is therefore subject to liability to Mr. Tullis for invasion of his privacy-false light, in violation of Ohio law.
321. Defendant is liable for its own actions and inactions and, under the doctrine of *respondeat superior*, Defendant is also vicariously liable for its employee(s)'s invasion of his privacy-false light.
322. The false light in which Mr. Tullis was placed would be highly offensive to a reasonable person.
323. Upon information and belief, Defendant, directly and/or by and through one or more employees, including one or more supervisory employees, allegedly had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which Mr. Tullis would be placed.



324. Upon information and belief, Defendant, directly and/or by and through one or more employees, allegedly made the untrue statements public, by allegedly communicating it to so many persons that the matter must be regarded as substantially certain to become one of public knowledge.
325. As a direct and proximate result of Defendant's above alleged willful and unlawful and continuous adverse actions and inactions, Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under Ohio law, in excess of \$25,000.

### **COUNT XVIII**

#### **(Defamation/Defamation *Per Se*/ Defamation *Per Quod*/ Slander and/or Libel)**

326. Mr. Tullis incorporates herein by reference each of the preceding allegations as if fully rewritten herein.
327. This claim applies to all applicable statements Mr. Tullis has and will hereafter discover.
328. Upon information and belief, Defendant, directly and/or by and through one or more of its employees, including one or more supervisory employees, allegedly made one or more false publications about Mr. Tullis that caused injury to his reputation and/or exposed him to public hatred, contempt, ridicule, shame, or disgrace, or affected him adversely in his trade or business , including regarding the alleged "smear campaign" as set forth above.
329. Defendant is liable for its own actions and inactions and, under the doctrine of *respondeat superior*, Defendant is also vicariously liable for its employee(s)'s alleged defamation, defamation *per se*, defamation *per quod*, slander and/or libel.
330. Upon information and belief, including in the alternative: (1) Defendant allegedly made one

or more false and defamatory statements; (2) allegedly about Mr. Tullis; (3) allegedly published without privilege to one or more third parties; (4) allegedly with fault of at least negligence on the part of Defendant; and (5) that was allegedly either defamatory *per se* or caused special harm to Mr. Tullis.

331. Upon information and belief, Defendant, directly and/or by and through one or more of its employees: (1) allegedly made one or more false and defamatory statements of fact about Mr. Tullis; (2) the statement(s) were allegedly defamatory; (3) the statement(s) were allegedly published; (4) Mr. Tullis suffered injury as a proximate result of the alleged publication; and (5) Defendant, directly and/or by and through one or more of its employees, allegedly acted with the requisite degree of fault in publishing the statement.
332. The defamation was allegedly *per se* as the alleged statement(s) are, on its face, defamatory and/or the defamation caused special harm to Mr. Tullis, including injury to his reputation and mental anguish and embarrassment.
333. In the alternative, the alleged defamation was *per quod* as capable of being interpreted as defamatory.
334. Defendant allegedly acted with malice in publishing the defamatory statement(s).
335. In the alternative, Defendant was allegedly at least negligent in publishing its defamation.
336. As a direct and proximate result of Defendant's alleged willful and unlawful and continuous adverse actions and inactions set forth in this Count, Mr. Tullis was caused to and did suffer the damages more fully specified below and Mr. Tullis is entitled to all damages and remedies available under Ohio law, in excess of \$25,000.

**DEMAND FOR JUDGMENT**

**WHEREFORE**, Mr. Tullis prays and demands judgment for Mr. Tullis in an amount to be proven at trial, but in excess of any and all jurisdictional minimums, as follows against Defendant for each of the above Counts:

- (a) For all remedies and damages available under the ADEA, Title VII and Ohio law, including Ohio Rev. Code §4112.02 [A], § 4112.02 [I] and § 4112.052 for, *inter alia*, age discrimination, sex discrimination and retaliation, including for wrongful termination or discharge, including via a discriminatory RIF, failing to transfer or reassign, harassment, a “smear campaign”, loss of severance benefits, as well as for intentional infliction of emotional distress, invasion of privacy—false light and defamation, including, but not limited to, past and future economic and non-economic damages, back pay, promotion, front pay, restitution, lost severance, lost benefits, prejudgment and postjudgment interest, punitive and liquidated damages, emotional distress damages, including severe emotional distress, humiliation, embarrassment, belittlement, frustration, mental anguish, pain and suffering damages, loss of enjoyment of life and self-esteem damages, any “Black mark” and loss of reputation damages, attorney fees, expert witness fees and costs in an amount to be determined at trial;
- (b) For exemplary, liquidated, double, treble, punitive and/or other exemplary damages in an amount to be proven at trial but in an amount of at least ten times Mr. Tullis’s damages award or verdict against Defendant or ten percent

(10%) of Defendant's annual gross income and/or net worth for each year beginning with the wrongful actions set forth in this Complaint or at the time of trial, or such higher amount as is set forth by evidence at trial and/or that a jury may award;

- (c) For a mandatory injunction and order directing Defendant to place Mr. Tullis in the position(s) he would have been in on the same terms and conditions as all other similarly situated employees he would have occupied but for Defendant's discriminatory conduct and/or promissory estoppel and making him whole for all earnings he would have received but for Defendant's discriminatory conduct and/or promissory estoppel, including, but not limited to, providing full seniority, wages and back pay plus interest thereon, and lost benefits;
- (d) For all consequential damages and other available compensatory damages not specified herein; and
- (e) For such other and further legal and equitable relief as may be just and proper, including that this Court and/or a jury determines is appropriate.

/s/ Dale A. Bernard  
**DALE A. BERNARD (0020001) of**  
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**ATTORNEY FOR PLAINTIFF**

**JURY DEMAND**

A trial by jury is hereby demanded of the maximum number allowed by law.

/s/ Dale A. Bernard  
Dale A. Bernard (0020001)  
Attorney for Plaintiff