

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

| | | |
|---|---|----------------------------|
| EQUAL EMPLOYMENT |) | |
| OPPORTUNITY COMMISSION |) | |
| |) | CASE NO.: 1:22-1882 |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| LILLY USA, LLC, a Domestic Limited |) | |
| Liability Company; |) | |
| |) | |
| Defendant. |) | |
| | | / |

COMPLAINT & DEMAND FOR JURY TRIAL

Plaintiff United States Equal Employment Opportunity Commission (“EEOC”), seeks relief for a class of individuals who were denied employment because of their age, and alleges upon information and belief, as follows:

NATURE OF ACTION

1. This is an action under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621, *et seq* (“ADEA”) to correct unlawful employment practices on the basis of age and to provide appropriate relief for a class of individuals who were denied employment because of their age. The ADEA prohibits discrimination against applicants and workers age 40 and over. As alleged with greater particularity below, evidence will establish that, nationwide, Defendant Lilly USA, LLC (“Lilly”) has failed to hire employees protected by the ADEA for pharmaceutical sales representative positions based on their age. The EEOC seeks damages

including back pay and liquidated damages for the class. The EEOC will further seek injunctive relief.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 451, 1331, 1337, 1343, and 1345. This action is also authorized and instituted pursuant to Section 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b) (the “ADEA”), which incorporates by reference Section 16(c) and 17 of the Fair Labor Standards Act of 1938 (the “FLSA”), as amended, 29 U.S.C. §§ 216(c) and 217.
2. Employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Southern District of Indiana pursuant to 28 U.S.C. § 1391(b).

PARTIES

3. The EEOC is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII, and is expressly authorized to bring this action by Section 7(d) of the ADEA, 29 U.S.C. § 626(b), as amended by Section 2 of the Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.
4. Defendant Lilly USA, LLC (“Lilly”), is a corporation headquartered in Indianapolis, Indiana and organized under the laws of the State of Indiana. Lilly specializes in the discovery, development, manufacturing, marketing, and sales of pharmaceutical products.
5. Defendant has continuously been doing business in the state of Indiana and in locations throughout the United States and continuously has had at least 20 employees.

6. At all relevant times, Defendant has been an employer engaged in an industry affecting commerce within the meaning of Sections 11(b), (g), and (h) of the ADEA, 29 U.S.C. § 630(b), (g), and (h).

CONDITIONS PRECEDENT

7. More than thirty days prior to the institution of the lawsuit, at least one charging party filed a charge of discrimination with the Commission alleging violations of the ADEA.

8. Prior to the institution of the lawsuit, the Commission's representatives attempted to eliminate the unlawful employment practices alleged below and effect voluntary compliance with the ADEA through informal methods of conciliation, conference, and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(d).

9. All conditions precedent to the institution of this lawsuit have been fulfilled.

FACTUAL ALLEGATIONS

10. On or around April 27, 2017, Lilly's Senior Vice President for Human Resources and Diversity, Steve Fry, presented at a Leadership Town Hall concerning Lilly's 2017 People Strategy.

11. As part of his presentation, Fry recognized that Lilly's workforce on a national level was skewed toward the older generations, having 20% less Millennials than the American workforce.

12. Fry suggested the lack of Millennials was a problem and that "[Lilly has] got to make sure that we have a workforce that is distributed . . . by generation."

13. Fry then announced that, to address the need for more Millennials in Lilly's workforce, the company would have a goal of 40% "Early Career" ("EC") hiring.

14. Following Fry's announcement, Lilly managers nationwide changed hiring practices and preferences to hire younger candidates for sales representative positions.

15. For example, older candidates for certain sales representative positions needed higher levels of review and approval before being extended an offer.

16. Lilly intentionally under-hired applicants protected by the ADEA for sales representative positions based on their age.

17. Even after Lilly managers recognized that the EC hiring goals constituted unlawful age discrimination, Lilly continued to under-hire applicants protected by the ADEA.

18. Lilly's EC goals remained in place through 2021.

CAUSE OF ACTION

19. As set forth in paragraphs ten (10) through eighteen (18), from April 2017 to December 2021, Defendants subjected a class of aggrieved applicants for sales representative positions to an ongoing pattern or practice of discriminatory failure to hire such persons because of their age in violation of Section 4 of the ADEA, 29 U.S.C. § 623(a).

20. The unlawful employment practices complained of in paragraphs ten (10) through eighteen (18) were willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

- a. Grant a permanent injunction enjoining Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in any employment practice which discriminates on the basis of age;
- b. Order Defendant to institute and carry out policies, practices, and programs, which provide equal employment opportunities for individuals covered by the ADEA, and which eradicate the effects of their past unlawful discrimination practices;

- c. Grant a judgment requiring Defendants to pay appropriate back wages in an amount to be determined at trial, an equal sum of liquidated damages, and prejudgment interest to individuals whose wages are being unlawfully withheld as a result of the acts complained of above, including but not limited to, individuals covered by the ADEA who were not hired because of their age;
- d. Order Defendants to make whole all individuals adversely affected by the unlawful employment practices described above, by providing the affirmative relief necessary to eradicate the effects of their unlawful employment practices, including but not limited to reinstatement, provide front pay in lieu of reinstatement, or otherwise make whole individuals denied employment because of their age;
- e. Order Defendants to provide training for supervisors and managers at all corporate levels specific to the ADEA;
- f. Grant such further relief as the Court deems necessary and proper in the public interest; and
- g. Award the Commission its costs of this action.

JURY DEMAND

21. The Commission requests a jury trial on all issues of fact raised by its complaint.

Dated: September 26, 2022

Respectfully submitted,

GWENDOLYN YOUNG REAMS
Acting General Counsel
U.S. Equal Employment
Opportunity Commission
131 M Street, N.E.
Washington, D.C. 20507

CHRISTOPHER LAGE
Deputy General Counsel
U.S. Equal Employment
Opportunity Commission
131 M Street, N.E.
Washington, D.C. 20507

ROBERT E. WEISBERG
Regional Attorney
Florida Bar No: 285676
Email: robert.weisberg@eeoc.gov
U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Miami District Office
Miami Tower
100 S.E. 2nd Street, Suite 1500
Miami, Florida 33131

KRISTEN FOSLID
Supervisory Trial Attorney
Florida Bar No: 0688681
Email: kristen.foslid@eeoc.gov
U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Miami District Office
Miami Tower
100 S.E. 2nd Street, Suite 1500
Miami, Florida 33131

s/Chelsae Johansen Ford
CHELSAE JOHANSEN FORD
Trial Attorney
Florida Bar No. 106029
Email: Chelsae.Ford@eeoc.gov
U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Tampa Field Office
501 E. Polk Street, Suite 1000
Tampa, FL 33602
Tel: 813.710.9346

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
U.S. Equal Employment Opportunity Commission
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
Chelsae Ford, 501 E. Polk St., Suite 1000, Tampa, FL 33602, (813)710-9346, chelsae.ford@eec.gov

DEFENDANTS
Lilly USA, LLC
County of Residence of First Listed Defendant Marion
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
[X] 1 U.S. Government Plaintiff
[] 2 U.S. Government Defendant
[] 3 Federal Question (U.S. Government Not a Party)
[] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State [] 1 [] 1
Citizen of Another State [] 2 [] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [] 5
Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Labor, and Tax Suits.

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original Proceeding
[] 2 Removed from State Court
[] 3 Remanded from Appellate Court
[] 4 Reinstated or Reopened
[] 5 Transferred from Another District (specify)
[] 6 Multidistrict Litigation - Transfer
[] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Age Discrimination in Employment Act
Brief description of cause:
Intentional Failure to Hire Based on Age

VII. REQUESTED IN COMPLAINT:
[] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE Richard L. Young DOCKET NUMBER 1:21-cv-2367

DATE 9/21/2022 SIGNATURE OF ATTORNEY OF RECORD s/Chelsae Johansen Ford

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

- V. **Origin.** Place an "X" in one of the seven boxes.
 - Original Proceedings. (1) Cases which originate in the United States district courts.
 - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 - Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: