

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	
	)	<u>COMPLAINT</u>
GREGG ORR AUTO COLLECTION, INC.	)	
	)	
Defendant.	)	
	)	<u>JURY TRIAL DEMAND</u>

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 (the “ADA”), Title I of the Civil Rights Act of 1991, and the Age Discrimination in Employment Act (the “ADEA”) to correct unlawful employment practices on the bases of disability and age and to provide appropriate relief to Charging Party William M. Dykes (“Dykes”). As alleged with greater particularity below, Defendant Gregg Orr Auto Collection, Inc. discriminated against Dykes when it terminated his employment on February 11, 2020, because of his disability and/or age.

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 authorized and instituted pursuant to Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e-5(f)(1) and (3), Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, and Section 7(b) of the ADEA, 29 U.S.C. § 626(b),

which incorporates by reference Section 16(c) and Section 17 of the Fair Labor Standards Act of 1938 (the “FLSA”), as amended, 29 U.S.C. §§ 216(c) and 217.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Eastern District of Texas, Texarkana Division. Venue is appropriate in this court.

### PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the “Commission”), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title I of the ADA and the ADEA. The Commission is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3), and by Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

4. At all relevant times, Defendant has continuously been a Texas corporation, headquartered in Texarkana, Texas, and has continuously done business in the State of Texas and Bowie County, Texas, and has continuously had at least 20 employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce under Sections 101(5) and 101(7) of the ADA, 42 U.S.C. §§ 12111(5) and (7), and Sections 11(b), (g), and (h) of the ADEA, 29 U.S.C. §§ 630(b), (g), and (h).

6. At all relevant times, Defendant has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

ADMINISTRATIVE PROCEDURES

7. More than thirty days prior to the institution of this lawsuit, Dykes filed a charge with the Commission alleging violations of the ADA and ADEA by Defendant.

8. On July 19, 2023, the Commission issued Defendant a Letter of Determination finding reasonable cause to believe that the ADA and ADEA were violated and inviting Defendant to join with the Commission in conciliating the matter.

9. The Commission engaged in conciliation discussions with Defendant to provide Defendant the opportunity to remedy the discriminatory practices described in the Letter of Determination.

10. The Commission was unable to secure from Defendant an acceptable conciliation agreement and, on August 18, 2023, the Commission issued Defendant a Notice of Failure of Conciliation.

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

STATEMENT OF CLAIMS

12. Defendant, along with affiliated companies, operates automobile, marine, and RV dealerships located in Texas, Arkansas, Florida, and Louisiana. Defendant engaged in unlawful employment practices in violation of the ADA, 42 U.S.C. § 12112(a), and/or the ADEA, 29 U.S.C. § 623(a)(1), on or around February 11, 2020, through practices including, but not limited to, the following:

a) Defendant created a new position in its corporate office, Vice-President of Preowned Operations, in 2012 to entice Dykes to leave his independent automotive business. Dykes accepted the position, and Defendant recognized his success with multiple significant raises in the following years.

b) Dykes reached 65 years of age in 2019. In October of that year, Dykes's doctors diagnosed him with a serious cancer. Dykes promptly informed Respondent of the diagnosis and stated that his doctors recommended surgical treatment.

c) Dykes sought and obtained a period of leave under the Family and Medical Leave Act ("FMLA") that began on December 16, 2019, and had surgery to treat his cancer on December 19, 2019. Because Defendant did not set a return-to-work date for Dykes before his leave commenced, Dykes did not know when Defendant expected him back in the office.

d) On January 13, 2020, just 28 days after his surgery, Dykes returned to the office hoping to discuss his ongoing role with Defendant's owner. Defendant's owner was not in the office that day, so Dykes proceeded to one of Defendant's dealerships and went to work reviewing and adjusting prices on Defendant's used vehicle inventory.

e) Dykes rushed back to work on January 13, 2020, despite his doctor's recommendation for several more weeks of medical leave. He did so because he had seen Defendant push workers with medical conditions or older workers out of the company in favor of younger workers or individuals needing less medical care and feared that Defendant might subject him to the same treatment.

f) Defendant maintains a self-insured health care plan for its employees. Because this arrangement makes Defendant directly responsible for its employees' medical expenses, Defendant tracks such expenses and regularly instructs its managers to control and reduce the company's healthcare expenditures.

g) In late January 2020, Dykes received a billing statement indicating that his cancer-treatment surgery and related hospital expenses had cost more than \$150,000.

h) Respondent knew that Dykes's cancer treatment would generate ongoing healthcare costs. Indeed, Dykes ultimately required more than 30 radiation treatments to further treat the cancer.

i) On February 11, 2020, without any prior warning, Respondent terminated Dykes and informed him that his employment and health insurance would end, effective immediately.

j) Although Respondent told Dykes that Respondent was eliminating Dykes's position, Respondent in fact replaced Dykes with an employee in his mid-30s.

#### COUNT I

##### [ADA – Disparate Treatment]

13. Plaintiff incorporates and reasserts the allegations in Paragraphs 12(a)-(j) of this Complaint.

14. On or around February 11, 2020, Defendant engaged in unlawful employment practices at its Texarkana, Texas office when it terminated the employment of Dykes on the basis of his disability in violation of the ADA, 42 U.S.C. § 12112(a), through the acts detailed in Paragraphs 12(a)-(j) above.

15. Dykes is a qualified individual with a disability, perceived disability, or record of disability under Sections 3 and 101(8) of the ADA, 42 U.S.C. §§ 12102 and 12111(8), who could perform the essential functions of his position with Defendant with or without an accommodation.

16. The unlawful employment practices complained of in Paragraphs 12 through 15 above were intentional.

17. The unlawful employment practices complained of in Paragraphs 12 through 15 above were done with malice or with reckless indifference to the federally protected rights of Dykes.

18. The effect of the practices complained of in Paragraphs 12 through 15 above has been to deprive Dykes of equal employment opportunities and to otherwise adversely affect his status as an employee because of his disability.

## COUNT II

### [ADEA – Disparate Treatment]

19. Plaintiff incorporates and reasserts the allegations in Paragraphs 12(a)-(j) of this Complaint.

20. On or around February 11, 2020, Defendant engaged in unlawful employment practices at its Texarkana, Texas office in violation of the ADEA, 29 U.S.C. § 623(a)(1), through the acts detailed in Paragraphs 12(a)-(j) above.

21. Defendant discriminated against Dykes by terminating him because of his age and replacing him with a substantially younger individual.

22. The effect of the practices complained of in Paragraphs 12(a)-(j), 20, and 21 above has been to deprive Dykes of equal employment opportunities and to otherwise adversely affect his status as an employee because of his age.

23. The unlawful employment practices complained of in Paragraphs 12(a)-(j), 20, and 21 above 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 Defendant, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with it, from engaging in employment practices that discriminate on the basis of disability or age.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals 40 years of age and older and for qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make Dykes whole by providing appropriate backpay in an amount to be determined at trial, an equal sum as liquidated damages or prejudgment interest in lieu thereof, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including, but not limited to, rightful-place hiring, front pay, and/or reinstatement.

D. Order Defendant to make Dykes whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above in amounts to be determined at trial, including but not limited to expenses incurred due to lost insurance benefits and the value of lost sales incentives.

E. Order Defendant to make Dykes whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of above, including, but not limited to, emotional pain, suffering, humiliation, and inconvenience in amounts to be determined at trial.

F. Order Defendant to pay Dykes punitive damages for its malicious and reckless conduct, as described above, in amounts to be determined at trial.

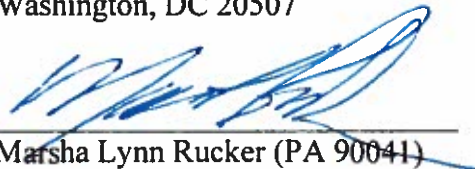
- G. Grant such further relief as the Court deems necessary and proper in the public interest.
- H. Award the Commission its costs of this action.

**JURY TRIAL DEMAND**

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

Gwendolyn Young Reams  
Acting General Counsel

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OPPORTUNITY COMMISSION  
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Regional Attorney

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JS 44 (Rev. 04/21)

### 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.)

<p><b>I. (a) PLAINTIFFS</b></p> <p>U.S. Equal Employment Opportunity Commission</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Bowie County, TX</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys (Firm Name, Address, and Telephone Number) Marsha Rucker   1130 22nd Street South   Birmingham, AL 35205   205-651-7045</p>	<p><b>DEFENDANTS</b></p> <p>Gregg Orr Auto Collection, Inc.</p> <p>County of Residence of First Listed Defendant <u>Bowie County, TX</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</p> <p>Attorneys (If Known) Louise E. Tausch   Atchley, Russell, Waldrop, &amp; Hlavinka   1730 Galleria Oaks, Texarkana, TX 75503   903-792-8246</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td>PTF</td> <td>DEF</td> <td></td> <td>PTF</td> <td>DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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<b>IV. NATURE OF SUIT</b> (Place an "X" in One Box Only)		Click here for: Nature of Suit Code Descriptions.				
<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p><b>IMMIGRATION</b></p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>INTELLECTUAL PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application</p> <p><input type="checkbox"/> 840 Trademark</p> <p><input type="checkbox"/> 880 Defend Trade Secrets Act of 2016</p> <p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395f)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS - Third Party 26 USC 7609</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)</p> <p><input type="checkbox"/> 485 Telephone Consumer Protection Act</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>		
<p><b>REAL PROPERTY</b></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p><b>CIVIL RIGHTS</b></p> <p><input type="checkbox"/> 440 Other Civil Rights</p> <p><input type="checkbox"/> 441 Voting</p> <p><input checked="" type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities - Other</p> <p><input type="checkbox"/> 448 Education</p>	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <p><input type="checkbox"/> 463 Alien Detainee</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><b>Other:</b></p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement</p>				

**V. ORIGIN** (Place an "X" in One Box Only)

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)  
42 U.S.C. § 12101, et seq.; 29 U.S.C. § 621, et seq.

Brief description of cause  
Disability and age-based employment discrimination

**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:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: Sep 21, 2023    SIGNATURE OF ATTORNEY OF RECORD: 

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_    AMOUNT \_\_\_\_\_    APPLYING IFP \_\_\_\_\_    JUDGE \_\_\_\_\_    MAG JUDGE \_\_\_\_\_