

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
MAY 03 2019  
LONG ISLAND OFFICE  
LONG ISLAND OFFICE

Daniel P. O'Donoghue

Complaint for Violation of  
Civil Rights  
Age / Employment  
Discrimination

—against—

**CV19 2619**  
Case No. \_\_\_\_\_

Trial By Jury Demand

Fire Department of the City of New York  
Daniel Nigro, Fire Commissioner

**KUNTZ, J.**

—and—

**BLOOM, M.J.**

The City of New York,

**The Parties to This Complaint**

**A. The Plaintiff**

Name	Daniel P. O'Donoghue	
Street Address	33 Olive Walk	
	Breezy Point, New York	
City and County	State and Zip Code	New York 11697
Telephone Number	6466604392	
E-mail Address	<u>Gingerrama@aol.com</u>	

**RECEIVED**

MAY 03 2019

**EDNY PRO SE OFFICE**

## **B. The Defendants**

### **Defendant No.1**

Fire Department of the City of New York  
9 Metro Tech Center  
Brooklyn, NY 11201  
Fire Commissioner, Daniel Nigro

Defendant No. 2  
The City of New York  
Law Department  
100 Church Street  
New York, NY 10007

## **INTRODUCTION**

1) Plaintiff, Daniel P. O'Donoghue, proceeding Pro Se brings this action against the Fire Department of New York (hereinafter FDNY), and the City of New York for damages and other relief relating to their continuing discrimination in failing to promote and/or hire Plaintiff to the position of Firefighter.

## **BASIS FOR JURISDICTION**

2) Venue is proper in this District pursuant to, 28 USC § 1391 (b) (1).

3) This Court has jurisdiction over Plaintiff's age/employment discrimination claims under 29 US Code Chapter 14 § 621 to 631 (The Age and Discrimination in Employment Act [ADEA] ); Article 1 , Section 8 clause

3, the Commerce Clause of the U. S. Constitution; the 14<sup>th</sup> Amendment of the Constitution which guarantees Equal Protection; 28 USC 1331; the New York City and New York State Human Rights Laws; Section 54 of the New York Civil Service Law; and the Administrative Code § 15-103; 42 USC 1983.

4) On information and belief, jurisdiction under the ADEA is pursuant to 29 US Code § 623 subsection ( j ) which authorizes the discriminate by age in the hiring of firefighters but only under a bona fide employment discrimination plan.

5) Plaintiff was an applicant for the position of firefighter who has been unfairly discriminated against because of his age and such discrimination was not pursuant to a bona fide plan as authorized by the ADEA in section 623 subsection (j) of the act.

6) On information and belief, the Court has jurisdiction of the Plaintiff's age discrimination claim under the Commerce Clause of the Constitution.

7) The ADEA section 621 defines unlawful age discrimination in employment as a burden to commerce and the free flow of goods in commerce.

8) The Court has jurisdiction pursuant to 42 USC 1983 . The

defendants acted under the color of state and local statutes (enumerated above) to unlawfully discriminate against the Plaintiff violating the plaintiff's rights under the 14<sup>th</sup> Amendment and the Commerce Clause of the U. S. Constitution, the right not be discriminated against because of his age, and other rights enumerated under the U.S. Constitution and the ADEA.

### **PROCEDURAL REQUIREMENTS**

9) Plaintiff alleges on or about April of 2018, he filed a complaint with the United States Equal Employment Opportunity Commission (EEOC), Complaint No.: 16G-2018-02962.

10) Plaintiff alleges on or about February 20, 2019, he received a Notice of Right to Sue from the EEOC.

11) Plaintiff filed this suit within the applicable statute of limitations period.

### **PLAINTIFF**

12) Plaintiff DANIEL P. O'DONOGHUE is a citizen of the United States of America, over twenty-one years of age, resident of Queens County and former applicant for the position of Firefighter, Fire Department City of New York.

### **DEFENDANTS**



13) The defendant CITY OF NEW YORK is a domestic municipal corporation and existing by virtue of the laws of the State of New York.

14) The defendant, THE FIRE DEPARTMENT OF THE CITY OF NEW YORK, is a department of the defendant, CITY OF NEW YORK. Defendant DANIEL NIGRO is the Commissioner of the FDNY.

### **FACTS**

15) There are two ways to apply for the position of firefighter. They are as follows: by taking an open competitive exam open to the public; or by taking a “promotional” exam offered to the Fire Department’s Emergency Medical Technicians.

16) The Plaintiff has applied for the position of firefighter by taking both the open competitive exam and the “promotional” exam.

17) A maximum age to apply for a firefighter exam has been set at 28 years of age by the defendants.

18) The defendants have allowed exceptions to the upper age limit for those with prior military service. In these cases the maximum age can be as high as 35 years of age.

19) Because of racial discrimination in prior exams, further maximum age exceptions were allowed for those who were discriminated against in

the 1999 and 2002 exams and who applied for the open competitive exam offered in 2012.

20) Approximately 293 spots were reserved on a priority basis for black and Latino candidates who weren't hired after taking the 1999 and 2002 tests. These spots allocated from those taking the open competitive exam of 2012.

21) As a result, candidates with lower passing grades on the 2012 exam were chosen before those with higher scores.

22) As a result, fewer applicants who took the 2012 exam who were age qualified and who had higher scores were not considered for the position of firefighter.

23) The selection of firefighters from the 2012 exam was not strictly based on the ability of the candidates.

24) The plaintiff is 31 years old who is presently employed as an FDNY Emergency Medical Technician (EMT).

25) Over the past years, critical to the plaintiff's age, the only valid open competitive exam offered by the FDNY was the above mentioned exam given in 2012.

26) In 2012, at the age of 25, the plaintiff took the open competitive

exam mentioned above and received a passing score of 98.

27) In 2013, the plaintiff joined the ranks of the NYFD as an Emergency Medical Technician.

28) Since 2013, the only “promotional” exam for the position of Firefighter was offered to EMTs in 2016.

29) In August, 2016, at his first and only opportunity, the plaintiff applied and eventually took the “promotional” exam to the position of Firefighter and received a passing score.

30) EMTs, similar to Firefighters, engage in the physically demanding tasks of rescuing victims under dangerous circumstances.

31) As an EMT, the Plaintiff has been trained in the operation of emergency ambulances and has been trained in the operation other emergency vehicles by taking an Emergency Vehicle Operators Course.

32) Firefighters along with EMTs are the first responders to critical emergency situations.

33) As an EMT, the Plaintiff has been certified as a first responder with defibrillation (CFR-D), a necessary requirement for a Firefighter in the FDNY.

34) As an EMT, the Plaintiff has been trained in the use and

response to the emergency communication systems.

35) As a part of his application for “promotion” to firefighter, the Plaintiff successfully completed the rigorous Candidate Physical Ability Test required of all firefighter recruits.

36) The Plaintiff has completed a Comprehensive Personnel Document (CPD) which evaluated his prior employment history, background screening of any arrest and/or conviction records, medical, physical psychological and exams to assess his suitability for the appointment to the position of Firefighter, Fire Department City of New York. The Plaintiff was found suitable by the Personnel Review Board of the FDNY.

37) In 2017, the Plaintiff was eventually denied “promotion” to Firefighter grade by the FDNY because he was over the age of 28 years at the beginning date (8/3/2016) of the application period (Plaintiff was 3 months over the maximum age).

16) As a result of the Defendant’s determination, the Plaintiff filed a complaint of failure to promote due to age discrimination with the Equal Employment Opportunity Commission (EEOC).

38) On February 20, 2019, the EEOC rejected the Plaintiff’s age discrimination claim by adopting the findings of the fair employment

practices agency that investigated the charge. The Plaintiff's Right To Sue letter is attached as exhibit A.

39) The EEOC determined that the Plaintiff's age discrimination claim should be dismissed because it found that an age restriction of 28 is a reasonable minimum qualification for public safety positions.

40) On or about 2017, the FDNY selected candidates who took the 2012 open competitive exam for the last class to be filled before the expiration of the exam.

41) Regardless of scores, priority for selection was given to those who were deemed victims of racism on prior exams.

42) After the priority selection, the selection process reached those with the same score on the exam as the Plaintiff.

43) At this point, the selection was based on a lottery system involving the last five digits of the applicant's Social Security Number.

44) As a result, the Plaintiff as well as approximately 50 others with the same score were not selected for the class.

45) On information and belief, a great many of the spots filled in this class were over the maximum age of 28 when they applied for the position of Firefighter.

46) On information and belief, a great many of the spots filled in this class received lower scores on the exam than the Plaintiff.

47) The FDNY made no attempt to accommodate the plaintiff and those eligible candidates who were denied entry into the class only because of the arbitrary lottery selection.

48) Over the past few years, members of the City Counsel have proposed legislation to increase the maximum age for NYFD Firefighter calling the present upper age limit of 28 archaic and discriminatory.

49) Nationwide, the FDNY has one of the most restrictive upper age limit. Most cities do not have an upper age restriction for those who wish to become firefighters. Those that do have an average age limit of 35.

50) The FDNY has consistently opposed raising the upper age limit.

51) One reason given for the FDNY's outrageous and discriminatory position is their fear of losing critical and highly trained Emergency Service personnel.

52) On information and belief, according to the ADEA, the existence of arbitrary age discrimination in employment must be forbidden because it burdens commerce and the free flow of goods in commerce.

53) On information and belief, in cases where employers, such as fire

departments, are permitted to discriminate, employers must show that the age discrimination is reasonably necessary and essential to the job.

54) On information and belief, where such discrimination is permitted, there must be a factual basis to believe that substantially all persons over the age established would be unable to perform safely or efficiently on the job.

55) On information and belief, according to the ADEA, States and Municipalities may discriminate by age in the hiring of Firefighters but only if the selection of a maximum age limit is pursuant to qualified bona fide hiring plan that is not a subterfuge to evade the disqualification of workers on the basis of their age.

56) On information and belief, the defendants have not shown that their age discrimination is pursuant to a qualified bona fide hiring plan that is not a subterfuge for blatant discrimination based on age.

57) On information and belief, the defendants' plan to limit the maximum age to 28 for some and 35 for others is a subterfuge established to avoid the employment of older workers not based on their ability or for any legitimate non discriminatory reason.

58) On information and belief, the statutory scheme promulgated by

the FDNY and the City of New York is irrational because of the exceptions to the age requirement imposed only on the Plaintiff and others who have not been in the military.

59) The defendant intentionally discriminated against the Plaintiff and those in his age group by failing to provide a reasonable number of acceptable entry exams during the time period when the plaintiff was age eligible.

60) Based on the FDNY's restrictive policy, the Plaintiff was eligible for only one exam. Even after taking that exam and receiving a score worthy of acceptance, the defendant was not given the opportunity of entering the academy.

61) Moreover, the FDNY's unfair employment practices, made it nearly impossible to attract and/or offer opportunities to the Plaintiff and others in his age group.

62) In so doing, the defendants have acted with malice and/or reckless disregard for the rights of the Plaintiff.



## **CAUSES OF ACTION**

### **Count One**

#### **Age Discrimination**

**Violation of Civil Service Law § 54,  
New York Human Rights Law, 42 U.S.C. § 1983**

63) Plaintiff hereby incorporates by reference each of the allegations in the foregoing paragraphs as if fully rewritten herein.

64) Defendants discriminated against Plaintiff Daniel O'Donoghue on the basis of his age by failing to promote him from the position of Emergency Medical Technician to the position of Firefighter after he received a passing grade on the exam and passing the Candidate Physical Ability Test.

65) The exam taken by the Plaintiff as an EMT was listed as a "promotional" exam.

66) On information and belief, by New York State law, an upper age limitation can only apply to those taking open competitive exams and not to those taking "promotional" exams.

67) On information and belief, Civil Service Law § 54 prohibits disqualification from participation in a promotional civil service exam on the basis of age.

68) Under color of law, the defendants improperly relied on an age

restriction by equating the exam as being akin to an entry level exam.

69) The training and responsibilities of an EMT are directly related to the position of firefighter. Thus, it is logical that an EMT applicant may be promoted to the rank of Firefighter.

70) Under color of law the defendants acted in a manner to deprive the Plaintiff's Constitutional rights of equal protection under the law and/or to be free from age discrimination, and/or, in so acting, the defendants also violated the commerce clause of the U. S. Constitution.

**Count Two 2**  
**Age discrimination in Employment in**  
Violation of ADEA; the Civil Service Law ;  
New York Human Rights Laws, 42 U.S.C. § 1983

71) Plaintiff hereby incorporates by reference each of the allegations in the foregoing paragraphs as if fully rewritten herein.

72) Defendants discriminated against Plaintiff Daniel O'Donoghue on the basis of his age by instituting an unlawful and unrealistic age qualification plan as the basis for hiring firefighters.

73) On information and belief, under the N. Y. Civil Service Law a maximum age limit is allowed for open competitive examination for positions where it is determined that such age requirements would be a reasonable

minimum qualification for such position.

74) On information and belief, the ADEA permits a local municipal corporations such as New York City to discriminate by age in hiring for the position of firefighter. However, under the act, the limit set must be pursuant to a bona fide hiring qualification or plan. The plan must not have been used as a subterfuge to evade discrimination because as age.

75) The defendants have not set forth a plan that would verify that candidates over the age of 28 would be the only maximum age that would qualify a person for the position of firefighter.

76) The upper age restriction of 28 years is not a reasonable minimum qualification for the position of Firefighter.

77) The age restriction of 28 does not insure the candidate's physical fitness since all applicants are required the take and pass the same physical tests.

78) The very fact that allowances are made for certain classifications of older applicants attest to the fact that the age of 28 years is not a reasonable minimum qualification and is on its face simply discriminatory.

79) The two separate age limits set by the defendants are a subterfuge to evade age discrimination practices.

80) By approving different age limits, the commission failed to establish that the upper age limit of 28 years is a reasonable minimum qualification for the position of firefighter.

81) The prohibition of employment of persons over the age of 28 at the time of their application for the position of firefighter is therefore invalid as being arbitrary, unreasonable and bears no rational relationship to any legitimate state or city purpose and as such deprives the Plaintiff of equal protection of the laws: and/or:

82) The prohibition of employment of persons over the age of 28 at the time of their application for the position of firefighter is invalid as being arbitrary, unreasonable and bears no rational relationship to any legitimate state or city purpose and as such violates the Commerce Clause of the United States Constitution, and/or:

83) The defendants, under color of law, discriminated against the Plaintiff because the highly restrictive and archaic maximum age limit of 28 years is not rationally related to the needs of the Fire Department.

84) The FDNY has not demonstrated or offered a qualifying plan to demonstrate how some who passed their 28<sup>th</sup> birthday are less able to perform in the position of Firefighter when compared to those who are 35

years of age with military service.

85) The reliance on two separate upper age limits allowed by the defendants are not pursuant to a bona fide qualification or plan (as an example, the upper age limit for hiring in the New York Police Department is 35 with no exceptions for military service).

### **Count Three**

86) Plaintiff hereby incorporates by reference each of the allegations in the foregoing paragraphs as if fully rewritten herein.

87) Candidates were selected for the position of Firefighter who had lower scores on the 2012 entrance exam than the Plaintiff.

88) The selection process was not based on merit .

89) The Plaintiff's rights were therefore in violation of the Civil Service Law, the New York Human Rights Laws, and 42 U.S.C. § 1983.

### **Relief**

Wherefore, the Plaintiff requests that the Court award him:

(a) A retroactive promotion to the grade of Firefighter with all attendant back pay, benefits and other emoluments of employment.

b) a sum in excess of \$200,000 in compensatory damages suffered because of the discrimination.

c) costs and reasonable attorneys' fees incurred with this lawsuit with interest thereon, and

d) other damages and further relief as deemed just.

### **Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

### **For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 5/3/19

Signature of Plaintiff 

Printed Name of Plaintiff Daniel P O'Donoghue

## Exhibit A



**DISMISSAL AND NOTICE OF RIGHTS**

To: **Daniel O'Donoghue**  
**32-28 202nd Street**  
**Bayside, NY 11361**

From: **New York District Office**  
**33 Whitehall Street**  
**5th Floor**  
**New York, NY 10004**



On behalf of person(s) aggrieved whose identity is  
**CONFIDENTIAL (29 CFR §1601.7(a))**

EEOC Charge No.

EEOC Representative

Telephone No.

**16G-2018-02962**

**Holly M. Shabazz,**  
**State & Local Program Manager**

**(212) 336-3643****THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

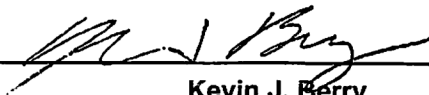
**- NOTICE OF SUIT RIGHTS -**

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



**Kevin J. Berry,**  
**District Director**

**February 20, 2019**

(Date Mailed)

Enclosures(s)

cc:

**Attn: Director of Human Resources**  
**CITY OF NEW YORK, FIRE DEPARTMENT**  
**Legal Affairs**  
**9 Metrotech Center, Room 4W-11**  
**Brooklyn, NY 11201**

PRO SE CHECK SHEET

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ MAY 03 2019 ★

LONG ISLAND OFFICE

PRO SE NAME Daniel O'Donoghue

☒ RANDOM SELECTION\*

☐ LONG ISLAND DRUM

☒ BROOKLYN DRUM

**CV19 2619**

DIRECT ASSIGN TO \_\_\_\_\_

**KUNTZ, J.**

RELATED TO \_\_\_\_\_

**BLOOM, M.J.**

☐ USE LONG ISLAND HABEAS DECK (2241 & 2254)

☐ USE BROOKLYN HABEAS DECK (2241 & 2254)

\*PLEASE DO NOT ASSIGN TO A SENIOR JUDGE.

THANK YOU.

19 CV 2619 (Kuntz) (Bloom)

JS 44 (Rev. 01/29/2018)

## CIVIL COVER SHEET

IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

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 use by the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Daniel P. O'Donoghue

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

pro se

## DEFENDANTS

LONG ISLAND OFFICE  
Fire Department of New York  
Daniel Nigro, Fire Commissioner  
County of Residence of First Listed Defendant et al

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (Firm Name, Address, and Telephone Number)

CV19 2619

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 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                        |   | 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 |

KUNTZ, J.

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

## 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):

29 USC 601 to 631

Brief description of cause:

Age 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

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

#27632

**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, \_\_\_\_\_, counsel for \_\_\_\_\_, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☐  
☐  
☐

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,

the complaint seeks injunctive relief,

the matter is otherwise ineligible for the following reason

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is 'related' to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed 'related' to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be 'related' unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? ☐ Yes ☒ No
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? ☐ Yes ☒ No
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☒ Yes ☐ No
- c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? ☐ Yes ☐ No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☐

Yes

☐

No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐

Yes (If yes, please explain

☐

No

I certify the accuracy of all information provided above.

Signature: \_\_\_\_\_