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ORIGINAL

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MAR 23 2012

John A. Clarke, Executive Officer/Clerk
BY Shaunya Wesley, Deputy

6037
90638

Attorneys for Plaintiff,
BOBBY DEAN NICKEL

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

BOBBY DEAN NICKEL,

Case No.: **BC 4 81391**

**PLAINTIFF BOBBY DEAN NICKEL'S
COMPLAINT FOR DAMAGES BASED
ON:**

Plaintiff,

- (1) **DISCRIMINATION ON THE BASIS OF AGE IN VIOLATION OF FEHA;**
- (2) **HARASSMENT ON THE BASIS OF AGE IN VIOLATION OF FEHA;**
- (3) **RETALIATION FOR COMPLAINING OF DISCRIMINATION AND HARASSMENT ON THE BASIS OF AGE IN VIOLATION OF FEHA;**
- (4) **BREACH OF EXPRESS AND IMPLIED-IN-FACT CONTRACTS NOT TO TERMINATE EMPLOYMENT WITHOUT GOOD CAUSE;**
- (5) **DEFAMATION AND COMPELLED SELF-DEFAMATION;**

vs.

STAPLES CONTRACT &
COMMERCIAL, INC., STAPLES,
INC., LIONEL MARRERO, and
DOES 1 to 100, inclusive,

Defendants.

DEMAND FOR JURY TRIAL

FILED: BC481391 LEA/DEF#:
RECEIPT #: CCH465980029
DATE PAID: 03/23/12 01:11:11 PM
AMOUNT: \$395.00
0310
RECEIVED:
CHECK#: 395.00
DATE: 03/23/12
CASH:
CHANGE:

Don Mark Moody

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1 Plaintiff, Bobby Dean Nickel, alleges:
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3 **PARTIES**

4 1. Plaintiff, Bobby Dean Nickel ("plaintiff" or "Nickel") is, and at all times
5 mentioned in this Complaint was, a resident of Los Angeles County, California.

6 2. Defendant Staples Contract & Commercial, Inc. ("Staples Contract") is, and at
7 all times mentioned in this Complaint was, authorized to operate by the State of
8 California and the United States government and authorized and qualified to do business
9 in the County of Los Angeles. Staples Contract's place of business, where the following
10 causes of action took place, was and is in the County of Los Angeles, at 16501 Trojan
11 Way, La Mirada, California 90638.

12 3. Defendant Staples, Inc. ("Staples") is, and at all times mentioned in this
13 Complaint was, authorized to operate by the State of California and the United States
14 government and authorized and qualified to do business in the County of Los Angeles.
15 Staples' place of business, where the following causes of action took place, was and is in
16 the County of Los Angeles, at 16501 Trojan Way, La Mirada, California 90638.

17 4. Defendant Lionel Marrero ("Marrero") is, and at all times mentioned in this
18 Complaint was, employed by Staples Contract and Staples and was plaintiff Nickel's
19 supervisor. At all times known to plaintiff, defendant Marrero was a resident of Los
20 Angeles County.

21 5. Defendants Does 1 through 100 are sued under fictitious names pursuant to Code
22 of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
23 alleges, that each of the defendants sued under fictitious names is in some manner respon-
24 sible for the wrongs and damages alleged below, in so acting was functioning as the agent,
25 servant, partner, and employee of the co-defendants, and in taking the actions mentioned
26 below was acting within the course and scope of his or her authority as such agent,
27 servant, partner, and employee, with the permission and consent of the co-defendants.

28 6. Defendants Staples Contract and Staples both directly and indirectly employed

1 plaintiff Nickel, as defined under the Fair Employment and Housing Act ("FEHA") at
2 Government Code section 12926(d).

3 7. In addition, defendants Staples Contract and Staples compelled, coerced, aided,
4 and abetted the discrimination, which is prohibited under California Government Code
5 section 12940(i).

6 8. Finally, at all relevant times mentioned herein, all defendants acted as agents of
7 all other defendants in committing the acts alleged herein.

9 **INTRODUCTORY ALLEGATIONS**

10 9. Plaintiff Nickel, a 64-year-old man, was employed by Corporate Express,
11 beginning on August 19, 2002, as a facilities manager. Defendants Staples Contract and
12 Staples acquired Corporate Express in approximately 2008. Plaintiff's direct supervisors
13 were Chris Hampson and defendant Marrero. At all times, plaintiff performed his duties
14 in an exemplary manner.

15 10. Corporate Express's pay scale was higher than those of Staples Contract and
16 Staples. After the takeover, in the last 2.5 years of plaintiff's employment, defendant
17 Marrero took steps to cut costs by firing older, higher paid employees and replacing
18 them with less qualified, less experienced people who would work for much less, in
19 addition to reducing hours for warehouse and maintenance employees. In management
20 meetings, Marrero told defendants' managers, including plaintiff, to "take a good, hard
21 look at all of the older people, and make sure they are top performers, or get rid of
22 them."

23 11. Marrero also increased plaintiff Nickel's hours in an effort to get him to resign
24 voluntarily. Nickel did not resign.

25 12. Nickel's duties included responsibility for maintenance, supplies, and security
26 for the building. During the last year of his employment, his security duties were
27 systematically eliminated.

28 13. In 2011, Marrero announced that defendants would no longer provide cell

1 phones to employees, another cost-saving measure. Thereafter, within the last three
2 months of his employment, plaintiff Nickel was accused of hacking into employees'
3 phones. Receptionist Carmen Kooiman told Nickel that defendants' management had
4 tried to make her say that Nickel tried to hack into employee cell phone accounts, but
5 that she refused.

6 14. Plaintiff Nickel was accused of theft when he took a bell pepper from the
7 cafeteria in the building and did not pay for it promptly. He learned later that there was a
8 problem with thefts of petty cash from California Dining, the company that operated the
9 cafeteria, but Nickel did not know that California Dining had a petty cash fund, nor did
10 he know about the thefts of cash at the time he took the pepper. Nevertheless, three
11 weeks before Nickel's employment was terminated, defendants—not California
12 Dining—accused him of "stealing from the cafeteria." Defendants' security chief, Jason
13 Daniels, told Nickel, "We got you. You're a thief; we got you."

14 15. Thereafter, Nickel was suspended for three days. After he returned to work, on
15 July 29, 2011, defendants abruptly terminated his employment for "continued disregard
16 of [Staples'] Ethics policy" and "conduct unbecoming a Manager," with no explanation.

17 16. Plaintiff believes and alleges that defendants terminated his employment in part
18 because of his age and the fact that he earned more money than younger employees.
19

20 **FIRST CAUSE OF ACTION**

21 **(Discrimination on the Basis of Age**

22 **(Government Code § 12940, et. seq.)—Against**

23 **Defendants Staples Contract and Staples)**

24 17. The allegations set forth in paragraphs 1 through 16 are re-alleged and
25 incorporated herein by reference.

26 18. At all times herein mentioned, FEHA, Government Code section 12940, et.
27 seq., was in full force and effect and was binding on defendants. This statute requires
28 defendants to refrain from discriminating against any employee on the basis of his or her

1 being more than 40 years old. Within the time provided by law, plaintiff filed a
2 complaint with the DFEH, in full compliance with administrative requirements, and
3 received a right-to-sue letter.

4 19. During plaintiff Nickel's employment with defendants, defendants, through
5 their supervisors, engaged in actions that had a negative impact on the treatment of
6 employees who were more than 40 years old. Specifically, defendants discharged older
7 employees with greater frequency than younger employees, hired fewer employees who
8 were older than 40, and gave better jobs and benefits to younger employees.

9 20. During plaintiff's employment with defendants, defendants intentionally
10 engaged in age discrimination by discharging employees over the age of 40 with greater
11 frequency than other employees. During plaintiff's employment with defendants,
12 defendants had a pattern and practice of discriminating against employees who were
13 more than 40 years old.

14 21. Plaintiff Nickel was a qualified employee at the time of the termination of his
15 employment, he was more than 40 years old, and he was replaced by an employee
16 younger than 40, raising an inference of discrimination.

17 22. Defendants, through their managers and supervisors, made a number of
18 comments to and about plaintiff Nickel that exhibited ageist motivations, intentions, and
19 consciousness. Plaintiff believes and on that basis alleges defendants' real motivation
20 was to discharge him because of his age.

21 23. On the basis of the above, plaintiff believes and alleges that his age was a
22 motivating factor in defendants' termination of his employment.

23 24. As a proximate result of defendants' willful, knowing, and intentional
24 discrimination against plaintiff, plaintiff has sustained and continues to sustain
25 substantial losses of earnings and other employment benefits.

26 25. As a proximate result of defendants' willful, knowing, and intentional
27 discrimination against plaintiff, plaintiff has suffered and continues to suffer humiliation,
28 emotional distress, and mental and physical pain and anguish, all to his damage in a sum

1 according to proof.

2 26. Defendants' discrimination was done intentionally, in a malicious, oppressive
3 manner, entitling plaintiff to punitive damages.

4 27. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
5 Plaintiff is at present unaware of the precise amounts of these expenses and fees and will
6 seek leave of court to amend this Complaint when the amounts are fully known.
7

8 **SECOND CAUSE OF ACTION**
9 **(Harassment on the Basis of Age (Government Code**
10 **§ 12940—Against Defendants Staples Contract,**
11 **Staples, and Marrero)**

12 28. The allegations set forth in paragraphs 1 through 27 are re-alleged and
13 incorporated herein by reference.

14 29. At all times herein mentioned, FEHA, Government Code section 12940(j)(1) and
15 12940(j)(3), was in full force and effect and was binding on defendants. This statute
16 requires defendants to refrain from harassing any employee on the basis of being more than
17 40 years old. Within the time provided by law, plaintiff filed a complaint with the DFEH,
18 in full compliance with administrative requirements, and received a right-to-sue letter.

19 30. Defendants engaged in actions to harass plaintiff because of his age.
20 Defendants directed numerous comments to plaintiff, as was stated above, shunned him
21 in daily activities, refused to involve him in various projects, and took other actions
22 directed toward plaintiff.

23 31. As a proximate result of defendants' willful, knowing, and intentional
24 harassment, plaintiff sustained damages in a sum according to proof.

25 32. As a proximate result of defendants' willful, knowing, and intentional
26 harassment, plaintiff has suffered and continues to suffer humiliation, emotional distress,
27 and mental and physical pain and anguish, all to his damage in a sum according to proof.

28 33. Defendants' harassment of plaintiff was done intentionally, in a malicious,

1 oppressive manner, entitling plaintiff to punitive damages.

2 34. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
3 Plaintiff is at present unaware of the precise amounts of these expenses and fees and will
4 seek leave of court to amend this Complaint when the amounts are fully known.
5

6 **THIRD CAUSE OF ACTION**
7 **(Retaliation for Complaining of Discrimination**
8 **and Harassment on the Basis of Age**
9 **(Government Code § 12940(h)—Against**
10 **Defendants Staples Contract and Staples)**

11 35. The allegations set forth in paragraphs 1 through 34 are re-alleged and
12 incorporated herein by reference.

13 36. At all times herein mentioned, FEHA, Government Code section 12940(h), was
14 in full force and effect and was binding on defendants. This statute requires defendants
15 to refrain from retaliating against employees for complaining of discrimination or
16 harassment. Prior to filing the instant Complaint, plaintiff Nickel filed a timely
17 administrative charge with the DFEH and received a right-to-sue notice.

18 37. Plaintiff believes and on that basis alleges that his complaints about
19 discrimination and harassment because of his age were a factor in defendants'
20 termination of his employment.

21 38. As a proximate result of defendants' willful, knowing, and intentional
22 retaliation against plaintiff, plaintiff has sustained and continues to sustain substantial
23 losses of earnings and other employment benefits.

24 39. As a proximate result of defendants' willful, knowing, and intentional
25 retaliation against plaintiff, plaintiff has suffered and continues to suffer humiliation,
26 emotional distress, and physical and mental pain and anguish, all to his damage in a sum
27 according to proof.

28 40. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.

1 Plaintiff is at present unaware of the precise amounts of these expenses and fees and will
2 seek leave of court to amend this Complaint when the amounts are fully known.

3 41. Defendants' misconduct was done intentionally, in a malicious, despicable,
4 oppressive manner, entitling plaintiff to punitive damages against defendants.

5
6 **FOURTH CAUSE OF ACTION**

7 **(Breach of Express and Implied-in-Fact Contracts Not to**
8 **Terminate Employment Without Good Cause (*Walker v.***
9 ***Blue Cross* (1992) 4 Cal.App.4th 985)—Against Defendants**
10 **Staples Contract and Staples)**

11 42. The allegations set forth in paragraphs 1 through 41 are re-alleged and
12 incorporated herein by reference.

13 43. Defendants, through their agents, entered into an express oral agreement with
14 plaintiff not to terminate plaintiff's employment except for good cause. Defendants
15 represented to plaintiff that his employment would not be terminated unless his job
16 performance were unsatisfactory. Plaintiff agreed and promised to work for defendants
17 on the basis of these promises and agreed to continue to work for defendants on the basis
18 of these promises. Plaintiff performed all duties required of him under this agreement.

19 44. On the basis of the length of plaintiff's employment with defendants, his
20 exemplary work record, his merit raises and promotion, defendants' oral assurances of
21 continued employment, and the policy and practice in defendants' industry of
22 terminating employment only for good cause, an implied-in-fact contract existed
23 between plaintiff and defendants. This contract required that defendants have good
24 cause for terminating plaintiff's employment.

25 45. Defendants and their supervisors terminated plaintiff's employment without
26 good cause, violating the express and implied-in-fact contracts they had with him.

27 46. As a proximate result of defendants' willful breach of the express and implied-
28 in-fact contracts not to terminate employment without good cause, plaintiff has suffered

1 and continues to suffer loss of earnings and benefits, all to his damage in a sum
2 according to proof.

3 47. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
4 Plaintiff is at present unaware of the precise amounts of these expenses and fees and will
5 seek leave of court to amend this Complaint when the amounts are fully known.

6 48. Plaintiff seeks attorneys' fees for lost wages under this cause of action under
7 Labor Code section 218.6.

8
9 **FIFTH CAUSE OF ACTION**
10 **(Defamation and Compelled Self-Defamation**
11 **(Civil Code §§ 45, 46)—Against Defendants**
12 **Staples Contract and Staples)**

13 49. The allegations set forth in paragraphs 1 through 48 are re-alleged and
14 incorporated herein by reference.

15 50. Defendants falsely informed individuals other than plaintiff that plaintiff was
16 fired for stealing, i.e. a theft, from defendants. However, these statements were not true;
17 in fact, defendants' real reason for terminating plaintiff's employment was their desire to
18 get rid of older employees who earned more. This representation constituted defamation
19 *per se*, imputing to plaintiff a crime and/or loathsome action involving his profession.

20 51. When defendants made this false representation, they knew that plaintiff would
21 be under a strong compulsion to repeat this comment to prospective employers. Plaintiff
22 was and is under such a compulsion and has told prospective employers of defendants'
23 defamatory comment.

24 52. As a result of defendants' willful, knowing, and intentional false representations
25 about plaintiff, plaintiff has been injured in his profession and continues to be injured in
26 his profession. Plaintiff has sustained and continues to sustain losses of earnings and
27 other employment benefits.

28 53. As a proximate result of defendants' willful, knowing, and intentional false rep-

1 resentations about plaintiff, plaintiff has suffered and continues to suffer humiliation,
2 mental pain and anguish, and other non-economic damages, all to his damage in a sum
3 according to proof.

4 54. Defendants' misconduct was done intentionally, in a malicious, despicable,
5 oppressive manner, entitling plaintiff to punitive damages against defendants.
6

7 WHEREFORE, plaintiff, Bobby Dean Nickel, prays for judgment against
8 defendants as follows:

- 9 1. For general and special damages according to proof;
- 10 2. For exemplary damages according to proof;
- 11 3. For pre-judgment and post-judgment interest on all damages awarded;
- 12 4. For reasonable attorneys' fees;
- 13 5. For costs of suit incurred;
- 14 6. For such other and further relief as the Court may deem just and proper.
15

16 ADDITIONALLY, plaintiff, Bobby Dean Nickel, demands trial of this matter by
17 jury.
18

19 Dated: March 23, 2012

SHEGERIAN & ASSOCIATES, INC.

20
21 By: Carney R. Shegerian
22 Carney R. Shegerian, Esq.

23 Attorneys for Plaintiff,
24 BOBBY DEAN NICKEL
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