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13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF WASHINGTON

15 KELLY O’KELL,

16 Plaintiff,

17 vs.

18 RYAN ZINKE, in his official capacity as
19 the Secretary of the United States
20 Department of the Interior,

21 Defendant.

)
) NO.

)
) COMPLAINT OF AGE
) DISCRIMINATION

22 **I. PARTIES**

1. Plaintiff Kelly O’Kell (“Plaintiff” or “Ms. O’Kell”) is a resident of the State of Washington and was employed by Defendant during the timeframe relevant

1 to this lawsuit.

2 2. Defendant Ryan Zinke (“Department Of Interior” or “Agency”) is the
3 Secretary of the United States Department of the Interior. He is sued in his official
4 capacity only.

5 **II. JURISDICTION AND VENUE**

6 3. This action arises under Age Discrimination in Employment Act
7 (ADEA), 29 U.S.C. §621, et. seq. Accordingly, this Court has jurisdiction pursuant
8 to 28 U.S.C. §1331.

9 4. Plaintiff exhausted her administrative remedies. Federal regulation, 29
10 C.F.R §1614.201(c)(1), states, in relevant part, that “administrative
11 remedies will be considered to be exhausted for purposes of filing a
12 civil action: (1) 180 days after the filing of an individual complaint if the
13 agency has not taken final action and the individual has not filed an
14 appeal.”
15

16 5. Ms. O’Kell filed an administrative complaint of Age Discrimination
17 and Retaliation on August 25, 2016, 180 days have elapsed since August 25, 2016,
18 Defendant has not taken final action on Ms. O’Kell’s complaint, and Ms. O’Kell has
19 not filed an appeal.
20

1 6. On July 25, 2018, Ms. O’Kell, through counsel, provided the EEOC
2 Federal Sector Programs with written notice (sent via certified mail, return receipt
3 requested) of her intent to file a claim, in federal district court, under the Age
4 Discrimination in Employment Act as it relates to the Defendant’s willful and
5 retaliatory termination of her employment that occurred on July 18, 2018. The EEOC
6 Federal Sector Programs received Ms. O’Kell’s written notice on July 30, 2018.
7 Over thirty days have passed since EEOC Federal Sector Programs received Ms.
8 O’Kell’s written notice of her intent to file this ADEA claim in federal district court.
9 Thus, Ms. O’Kell has exhausted her administrative remedies as it relates to her
10 ADEA retaliatory discharge claim stemming from the Agency’s July 18, 2018,
11 termination of her employment.
12

13 7. Venue is appropriate under 28 U.S.C. §1391(b) because the events
14 giving rise to this Complaint occurred in this district.
15

16 **III. FACTS**

17 8. The Agency hired Ms. O’Kell as a GS-11 Realty Specialist during the
18 July 2014 timeframe.

19 9. At all times relevant to this lawsuit the DOI employed Ms. O’Kell at its
20 Ephrata, Washington office located at 32 C Street NW, Ephrata, Washington 98823.
21
22

1 10. At all times relevant to this lawsuit Ms. O’Kell was more than 40 years
2 old.

3 11. During the April 2016 timeframe Anthony Ortiz served as Ms. O’Kell’s
4 direct supervisor, Clyde Lay (the Ephrata Deputy Field Office’s Manager) served as
5 Ms. O’Kell’s second level manager, and Clinton Wertz served as the Ephrata Field
6 Office’s Manager.

7 12. During the April 2016 timeframe Ms. O’Kell applied for a GS-12
8 Project Manager job opening at the Agency’s Ephrata, Washington Field Office. Ms.
9 O’Kell applied for the above referenced position because Mr. Lay and Mr. Wertz
10 told her that she was the only person in that office who was qualified for that
11 position.
12

13 13. Ms. O’Kell was 56 years old when she applied for the Project Manager
14 position.
15

16 14. The Agency did not hire Ms. O’Kell for the Project Manager position.
17 Instead it hired Charity Davidson as the Project Manager.

18 15. Ms. Davidson, a slender blonde, was less than 40 years of age when the
19 Agency hired her as the Project Manager.

20 16. On May 19, 2016, Sarah Maciel (who sat on the hiring panel for the
21 Project Manager position) told Ms. O’Kell that although Ms. O’Kell and Ms.
22

1 Davidson were “pretty equal” in qualifications Mr. Wertz chose to hire Ms.
2 Davidson because she was “young and perky and going to bring new energy to the
3 office.”

4 17. The Agency’s decision to hire Ms. Davidson over Ms. O’Kell because
5 of Ms. O’Kell’s age was, for the reasons set out in this complaint, willful given, *inter*
6 *alia*, Mr. Wertz’s early-2016 comments (more on them below) to Ms. O’Kell
7 claiming that he would never hire a female over 50 years old and Ms. Maciel’s
8 comments to Ms. O’Kell that took place on May 19, 2016.

9
10 18. During the May 2016 timeframe Mr. Ortiz, told Ms. O’ Kell that she
11 should apply for “tele-work” because “at [Ms. O’Kell’s] age it is hard to get into the
12 office every day.” Additionally, Mr. Ortiz, throughout the 2016 timeframe
13 repeatedly asked Ms. O’Kell as to when she was “planning on retiring.” In response
14 to Mr. Ortiz’s queries about her “retirement plans” Ms. O’Kell said “I have to work
15 another 10 -15 years - please stop asking me that.”
16

17 **(The protected activity.)**

18 19. On May 25, 2016, Ms. O’Kell, as required by federal regulation,
19 contacted the Agency’s “EEO Counselor” to complain of, *inter alia*, the above-
20 referenced age discrimination regarding her non-selection for the Project Manager
21 position.
22

1 20. Ms. O’Kell’s May 25, 2016, EEO complaint implicated Mr. Ortiz, Mr.
2 Wertz, Mr. Lay, and Ms. Maciel.

3 21. On May 25, 2016, the Agency’s EEO counselor notified Ms. O’Kell’s
4 management, including Mr. Ortiz, Mr. Wertz, and Mr. Lay, of Ms. O’Kell’s EEO
5 complaint.

6
7 **(The retaliation.)**

8 22. On June 2, 2016, Mr. Ortiz terminated Ms. O’Kell’s telework
9 agreement. The termination of Ms. O’Kell’s telework agreement adversely affected
10 Ms. O’Kell because Ms. O’Kell shared an office with Sarah Maciel at the time and
11 Ms. O’Kell was continuously subjected to Ms. Maciel’s abusive remarks which, in
12 turn, caused Ms. O’Kell stress that effected the terms and conditions of her
13 employment as Ms. Maciel eavesdropped on Ms. O’Kell’s phone calls and yelled at
14 Ms. O’Kell for trivial matters.
15

16 23. On July 20, 2016, Mr. Ortiz charged Ms. O’Kell with going AWOL
17 for three hours when, in reality, Ms. O’Kell was at lunch and then in transit to/from
18 the Agency’s Yakima Field Office. Ms. O’Kell went the Columbia Cascade Area
19 Office to speak to upper management because Ms. O’Kell had been told by Mr. Ortiz
20 “you are outa here,” as he was walking down the hall with her. This was a
21
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1 threat/promise of termination “for contacting EEO Counselor without permission
2 from Mr. Wertz and Mr. Lay.”

3 24. On July 21, 2016, the Agency reprimanded Mr. O’Kell for and alleged
4 hostile interaction that she (O’Kell) had with Ms. Maciel *in April 2016*. That the
5 reprimand came *after* Ms. O’Kell’s EEO activity is probative of the Agency’s
6 retaliatory animus. Indeed, when being presented with the reprimand Mr. Ortiz told
7 Ms. O’Kell that “things would get worse” if she continued with her EEO complaint
8 for age discrimination. Shockingly, the Agency’s July 21, 2016, write up expressly
9 mentions Ms. O’Kell’s protected activity and reprimands her for undertaking that
10 protected activity. This express mention of Ms. O’Kell’s protected activity in
11 opposing age discrimination is further evidence of the Agency’s willful violation of
12 the ADEA.
13

14 **(The second instance of protected activity.)**

15 25. On August 25, 2016, Ms. O’Kell filed a formal complaint of age
16 discrimination and retaliation.
17

18 **(The Agency continues its retaliatory course of conduct.)**

19 26. Thereafter Mr. Ortiz told Ms. O’Kell that she (O’Kell) was on Mr.
20 Lay’s “hit list” and that “once you get on it, you never get off.”
21
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1 27. From December 2016 through June 2017 Mr. Ortiz repeatedly told Ms.
2 O’Kell that Mr. Wertz and Mr. Lay were continually ranting about Ms. O’Kell’s
3 EEO complaint. This is, yet again, more evidence of the Agency’s willful violation
4 of the ADEA.

5 28. On April 27, 2017, Mr. Ortiz told Ms. O’Kell that Mr. Wertz and Mr.
6 Lay had ordered Mr. Ortiz to fail Ms. O’Kell on her Employee Performance
7 Appraisal Plan (EPAP) because she had filed an EEO complaint. The Ephrata Field
8 Office Operation Supervisor, Toni Turner, witnessed this conversation. Mr. Ortiz
9 told Ms. O’Kell that she had been warned that she is not allowed to contact anyone
10 outside of the Ephrata Field Office without going through the chain of command and
11 having permission from Mr. Wertz and Mr. Lay. Mr. Ortiz stated Ms. O’Kell
12 understood that contacting the EEO Counselor without Mr. Wertz and Mr. Lay’s
13 permission is not allowed.
14

15 29. On September 14, 2017, Mr. Lay recommended that the Agency
16 suspend Ms. O’Kell because she used the phrase “young and perky” in an email.
17

18 30. In October 24, 2017 Mr. Lay failed Ms. O’Kell on her EPAP.

19 31. During the above-referenced EPAP meeting Mr. Lay told Ms. O’Kell
20 that John Brooks (age 45) and Nasha Flores (age 40) had filed a “hostile work
21 environment” claim against Ms. O’Kell for Ms. O’Kell’s alleged outburst during an
22

1 October 17, 2017, meeting. Mr. Lay then stated the Brooks/Flores complaint would
2 be “all he needed” to “finally get rid” of Ms. O’Kell. Mr. Lay concluded the meeting
3 by admonishing Ms. O’Kell for being too “concerned with the laws and regulations.”

4 32. The Agency’s HR department ultimately determined that the
5 Brooks/Flores “hostile work environment” complaint was unfounded.

6 33. Upon information and belief, the Agency did not discipline, write up,
7 reprimand or otherwise chastise Mr. Brooks and Ms. Flores for bringing their false
8 complaint against Ms. O’Kell.

9 34. On March 14, 2018 Mr. Brooks and Mr. Lay, in the presence of many
10 of Ms. O’Kell’s co-workers, escorted Ms. O’Kell from an All Employee Luncheon
11 and threatened her with termination if she did not cooperate with a private
12 investigator who refused to identify himself, refused to show Ms. O’Kell the
13 allegations against her, and refused to tell her who hired him.

14 35. On or about March 14, 2018, the private investigator informed Ms.
15 O’Kell that she would be terminated if she did not cooperate with him even though
16 he (the investigator) refused to disclose his identity, who hired him, and all of the
17 allegations that had been levied against Ms. O’Kell. The investigator did, however,
18 confront Ms. O’Kell with false statements about her.
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1 36. Upon information and belief, Mr. Lay and Mr. Brooks hired the
2 investigator to make up a reason to fire Ms. O’Kell and did so in retaliation for Ms.
3 O’Kell’s prior EEO activity.

4 37. On May 14, 2018, the Agency presented Ms. O’Kell with its proposal
5 to fire Ms. O’Kell.

6 38. The “Proposal to Remove” was in retaliation for Ms. O’Kell’s
7 complaints of age discrimination because she reported the retaliation and harassment
8 of Clyde Lay and Jon Brooks.

9 39. On July 18, 2018, the Agency terminated Ms. O’Kell’s employment
10 and, in its termination letter, again expressly referenced the July 21, 2016, letter of
11 reprimand in which the Agency reprimanded Ms. O’Kell for her opposition to the
12 Agency’s age discrimination. This, too, is evidence of the Agency’s willful disregard
13 of the ADEA.
14

15 **(Other instances of the Agency’s age discrimination.)**
16

17 40. During the November - December 2015 timeframe Ms. O’Kell
18 participated in the Agency’s process of hiring three new Realty Specialists at the
19 Ephrata Field Office. As part of the process a series of meetings took place. At the
20 first meeting, which took place on or about the end of November 2015 Mr. Ortiz told
21
22

1 Ms. O’Kell that he had been ordered, by Mr. Wertz, to not hire elderly employees
2 but, instead, hire “young and new” employees.

3 41. One of the individuals that the Agency refused to hire during the above-
4 timeframe was Pat Snyder. During that timeframe Mr. Ortiz told Ms. O’Kell that
5 Ms. Snyder had not been hired because “she was old” like Ms. O’Kell.

6 42. Upon information and belief, between July 2014 and the present day
7 approximately 20-25 jobs have opened at the Ephrata Field Office. Of those jobs
8 that became open two of them were filled by a female employee/applicant that was
9 over 40 years of age.
10

11 43. During the February – March 2016 timeframe Mr. Wertz told Ms.
12 O’Kell words to the effect of “I will never make the mistake of hiring a woman over
13 50 again because they can’t carry the workload like a man.”

14 44. On or about May 23, 2016 Ms. O’Kell confronted Mr. Wertz about
15 whether Ms. Davidson was hired because she was “young and perky and going to
16 bring new energy to the office” and Mr. Wertz did not deny the allegation, and, in
17 fact, promised to “make it up to her” in the future - - - the “it” being the age
18 discrimination.
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1 45. On or about May 23, 2016, Ms. O’Kell confronted Mr. Lay about
2 whether Ms. Davidson was hired because she was “young and perky and going to
3 bring new energy to the office” and Mr. Lay did not deny the allegation.

4 **IV. LEGAL CLAIMS**

5 **(Violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621, et**
6 **seq. – Discrimination)**

7 46. Plaintiff incorporates the above allegations.

8
9 47. The ADEA bars employers from discriminating against an employee
10 because of that employee’s age.

11 48. Discrimination under the ADEA includes, in part, an Agency’s failure
12 to promote an employee to a higher position because of that employee’s/applicant’s
13 age.

14 49. The Agency willfully discriminated against Ms. O’Kell on account of
15 Ms. O’Kell’s age by not promoting her to the Project Manager position.

16 50. The Agency’s discriminatory conduct caused Ms. O’Kell damages in
17 an amount to be proven at trial.

18
19 **(Violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621, et**
20 **seq. – Retaliation & Hostile Work Environment.)**

21 51. Plaintiff incorporates the above allegations.

1 52. An employer cannot retaliate against an employee who complaints of
2 age discrimination in the workplace.

3 53. Nor can an employer subject an employee to a hostile work
4 environment on account of that employee's age or on account of that employee's
5 opposition to the employer's age discriminatory practices.

6 54. The Agency willfully retaliated against Ms. O'Kell on account of her
7 above-referenced complaints of age discrimination that Ms. O'Kell made in May
8 2016 (to the Agency's EEO office), July 2016 (to the Agency's Yakima, Washington
9 office), and August 2016 (to the Agency's EEO office).

10 55. The Agency also subjected Ms. O'Kell to a hostile work environment
11 on account of her opposition to the Agency's age discriminatory practices.

12 56. The Agency's retaliatory conduct consists of, *inter alia*, denying her
13 the telework opportunity in June 2016, subjecting Ms. O'Kell to discipline in July
14 2016, reprimanding Ms. O'Kell in July 2016, reprimanding Ms. O'Kell in
15 September 2017 for using "young and perky" in an email, refusing to stop certain
16 co-workers/supervisors of Ms. O'Kell from harassing her, subjecting Ms. O'Kell to
17 a sham investigating sanctioned by a private investigator, and then terminating Ms.
18 O'Kell's employment on July 18, 2018.
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