

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

TIMOTHY CESARIO, STEVE CIESLAK,)
GREGORY LAROCCO and JAMES LEE)

Plaintiffs,)

v.)

NO.

AB ACQUISITIONS, LLC,)
JEWEL FOOD STORES, INC.,)
a/k/a JEWEL-OSCO, a Cerberus Capital)
Management Company,)
d/b/a JEWEL-OSCO,)
NEW ALBERTSON’S, INC., and)
JEWEL OSCO SOUTHWEST LLC,)

Defendants.)

JURY TRIAL DEMANDED

COMPLAINT

NOW COME Plaintiffs, TIMOTHY CESARIO, STEVE CIESLAK, GREGORY LAROCCO and JAMES LEE (individually or collectively as “Plaintiffs”), by and through their attorneys, Nicholas F. Esposito, Bradley K. Staubus, Christopher K. Crimer, and Christopher Rubey and for their Complaint against Defendants: AB ACQUISITIONS, LLC; JEWEL FOOD STORES, INC., a/k/a JEWEL-OSCO, a Cerberus Capital Management Company, d/b/a JEWEL-OSCO; NEW ALBERTSON’S, INC.; and JEWEL OSCO SOUTHWEST LLC, (“Defendants”), allege the following:

JURISDICTION, VENUE, AND PARTIES

1. This action is brought pursuant to the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634 *et seq.* (“ADEA”), Americans with Disabilities Act of 1990 as amended, 42 U.S.C. § 12101, *et seq.* (“ADA”), and 28 U.S.C. §§1331, 1343(a)(3) and (4).

2. Jurisdiction exists under 28 U.S.C. § 1331 because this action arises under the laws

of the United States, and §1343(4) because this action arises from an Act of Congress for the protection of civil rights and 28 U.S.C. § 1367 for supplemental jurisdiction of related state claims. The jurisdiction of this Court is invoked to secure protection of and redress deprivation of rights guaranteed by federal law, which rights provide for damages, injunctive and other relief for illegal discrimination in employment.

3. Venue in this district is proper under 42 U.S.C. § 2000e-5(f) (3) and 28 U.S.C. § 1391(b) and (c) because the unlawful employment practices occurred in this district and one or more parties reside in this district.

4. Plaintiff, Timothy Cesario (“Cesario”), is a sixty-one-year-old male and resident of Kendall County, Illinois.

5. Plaintiff, Steve Cieslak (“Cieslak”), is a fifty-six-year-old male and resident of DuPage County, Illinois.

6. Plaintiff, Gregory LaRocco (“LaRocco”), is a sixty-one-year-old male and resident of Kane County, Illinois.

7. Plaintiff, James Lee (“Lee”), is a fifty-nine-year-old male and resident of Cook County, Illinois.

8. At all times relevant hereto, Plaintiffs were over forty (40) years of age.

9. Defendants collectively own and operate a chain of grocery stores with locations throughout Illinois including this judicial district. Defendants collectively are engaged in an industry affecting commerce and, at all times pertinent hereto, was an employer within the meaning of 29 U.S.C. §630(b) and 42 U.S.C. §2000e(b). On information and belief, Defendants employ more than five hundred (500) employees.

10. Defendant AB Acquisitions, LLC, is an Illinois Limited Liability Corporation, with

its principal place of business in the Village of Westchester, Cook County, IL.

11. Defendant Jewel Food Stores, Inc. is an Ohio Corporation, with its principal place of business in the Village of Itasca, DuPage County, IL.

12. Defendant New Albertson's, Inc., is an Ohio Corporation, with its principal place of business in Boise, Idaho, and doing business in this judicial district.

13. Defendant Jewel Osco Southwest LLC is an Illinois Limited Liability Corporation, with its principal place of business in Boise, Idaho, and doing business in this judicial district.

14. Venue is appropriate in this judicial district in that Plaintiffs reside here and all Defendants have their principal place of business here and/or do business here.

15. Cesario is employed by Defendant as a Store Director. Cesario is still employed but is currently on long term disability.

16. On or around December 4, 2015, Cesario filed a Charge of Discrimination against Defendant with the Equal Employment Opportunity Commission ("EEOC"). On or around December 14, 2015, Cesario filed an Amended Charge of Discrimination with the EEOC. Cesario's Charge of Discrimination was filed within three hundred (300) days after the alleged unlawful employment practice(s) occurred. More than sixty (60) days have expired since Cesario filed his EEOC Charge. Cesario has otherwise complied with all administrative prerequisites to filing this action.

17. On or around January 6, 2017, Cesario received his Notice of Right to Sue from the EEOC. (See Exhibit A attached hereto) Cesario timely filed this complaint within ninety (90) days of receipt of the EEOC's Notice of Right to Sue.

18. Cieslak is employed by Defendant as a Store Director. Cieslak is currently employed but on short term disability.

19. On or around June 26, 2015, Cieslak filed a Charge of Discrimination against Defendant with the Equal Employment Opportunity Commission (“EEOC”). On or around December 14, 2015, Cieslak filed an Amended Charge of Discrimination with the EEOC. Cieslak’s Charge of Discrimination was filed within three hundred (300) days after the alleged unlawful employment practice(s) occurred. More than sixty (60) days have expired since Cieslak filed his EEOC Charge. Cieslak has otherwise complied with all administrative prerequisites to filing this action.

20. On or around January 6, 2017, Cieslak received his Notice of Right to Sue from the EEOC. (See Exhibit B attached hereto) Cieslak timely filed this complaint within ninety (90) days of receipt of the EEOC’s Notice of Right to Sue.

21. LaRocco was employed by Defendant as a Store Director. LaRocco’s employment ceased on August 17, 2015 as a result of employment termination.

22. On or around August 6, 2015, LaRocco filed a Charge of Discrimination against Defendant with the Equal Employment Opportunity Commission (“EEOC”). On or around August 19, 2015, LaRocco filed an Amended Charge of Discrimination with the EEOC. On or around December 9, 2015, LaRocco filed a Second Amended Charge of Discrimination with the EEOC. LaRocco’s Charge of Discrimination was filed within three hundred (300) days after the alleged unlawful employment practice(s) occurred. More than sixty (60) days have expired since LaRocco filed his EEOC Charge. LaRocco has otherwise complied with all administrative prerequisites to filing this action.

23. On or around January 6, 2017, LaRocco received his Notice of Right to Sue from the EEOC. (See Exhibit C attached hereto) LaRocco timely filed this complaint within ninety (90) days of receipt of the EEOC’s Notice of Right to Sue.

24. Lee was employed by Defendant as a Store Director. Lee's employment ceased on March 28, 2015 as a result of constructive discharge.

25. On or around July 30, 2015, Lee filed a Charge of Discrimination against Defendant with the Equal Employment Opportunity Commission ("EEOC"). On or around December 9, 2015, Lee filed an Amended Charge of Discrimination with the EEOC. Lee's Charge of Discrimination was filed within three hundred (300) days after the alleged unlawful employment practice(s) occurred. More than sixty (60) days have expired since Lee filed his EEOC Charge. Lee has otherwise complied with all administrative prerequisites to filing this action.

26. On or around January 6, 2017, Lee received his Notice of Right to Sue from the EEOC. (See Exhibit D attached hereto) Lee timely filed this complaint within ninety (90) days of receipt of the EEOC's Notice of Right to Sue.

27. Defendant is a grocery store retailer that owns and operates approximately one-hundred and eighty-five (185) stores throughout Illinois, Iowa and Indiana.

28. In 2006, Supervalu, Inc., a Delaware Corporation, acquired Albertson's, Inc. and all Albertson's-owned stores, including Jewel-Osco. Jewel-Osco became an operating unit of Supervalu, Inc.

29. Prior to 2011, Defendant operated most of its stores on a dual-store format so that Jewel food stores were operated and managed separately from Osco drug stores.

30. Prior to 2011, Defendant employed two (2) store directors in each store location, one director overseeing the food operations and one director overseeing the drug operations.

31. In early 2011, Defendant underwent a Reduction-in-Force ("RIF") and offered early buy-out incentive packages to Jewel and Osco Store Directors. Plaintiffs among others were offered early buy-out severance packages. Plaintiffs turned down the early buyout severance

packages and continued employment with Defendant. Thereafter, they were targeted by Defendant and retaliated against.

32. Prior to April of 2011, each of Defendant's stores had one (1) Store Director overseeing food and other related product operations, and a separate Store Director overseeing drug and other related product operations (hereafter "dual-director" stores).

33. Before April of 2011, Plaintiffs, LaRocco and Lee were each employed by Defendant as Osco Store Directors overseeing and responsible for the drug operation. Plaintiffs, Cesario and Cieslak, was employed by Defendant as a Jewel Store Director overseeing and responsible for the food operation.

34. By April of 2011, Defendant had consolidated its store management structure and moved from dual-director stores to a single-director store format.

35. After April of 2011, Plaintiffs, LaRocco and Lee were transferred from the position of Osco Store Director at Osco Drug, to the position of Store Director at Jewel-Osco, including both food and drug operations.

36. After April 2011, Plaintiff, Cieslak and Cesario, were transferred from the position of Food Store Director at Jewel, to Store Director at Jewel-Osco, which included both food and drug operations.

37. In April 2011, when Defendant transferred Plaintiffs to their respective Store Director positions, Defendant failed to train them and/or provided them insufficient training in the branch of the store (Osco Drug or alternatively Jewel Foods, as the case may be) with which they were not specifically familiar or experienced.

38. In or around April 2013, District Manager, Dave Negron ("Negron"), stated at a district meeting that Defendant did not "view *tenure* [code for age] as a good thing".

39. In or around June/July 2011, Steven DeSantiago stated at a district meeting “people with *longevity* [code for age] are not considered necessarily valued by the company”.

40. During the Plaintiffs’ respective tenure as Store Directors of Defendant, Plaintiffs met and/or exceeded the legitimate expectations of Defendant, but it was never enough.

41. After April 2011, Plaintiffs were transferred to stores that were failing and underperforming.

42. After arriving at these failing and underperforming stores, Plaintiffs were subjected to heightened scrutiny, excessive micromanaging, criticism, reprimands and abusive language, and required to work excessive hours by their District Managers and/or Vice President, including for minor flaws that had never been an issue.

43. Despite making substantial store improvements and contributions, Plaintiffs received constant criticisms, write-ups and unwarranted negative performance reviews by their District Managers, many of whom were more than ten (10) years their junior.

44. As a result of unwarranted negative performance reviews, Defendant denied Plaintiffs the opportunities for promotion, transfer and/or bonuses.

45. Instead, Defendant also increased Plaintiffs’ responsibilities without providing increased support staff.

46. Plaintiffs’ District Managers also made comments related to their age, as well as subjected Plaintiffs to threats, warnings and intimidation about the prospect of job loss if there was lack of improvement.

47. Other, similarly-situated store directors under the age of forty (40) or at least ten (10) years younger than the youngest Plaintiff: 1) were not criticized and/or reprimanded for the same issues in their stores or at least not to the same degree; 2) were transferred to better

performing stores; 3) were offered support staff to assist with increased responsibilities; and 4) were not given negative performance reviews for issues that Plaintiffs were criticized and/or reprimanded for, or at least not to the same degree.

48. During Plaintiffs' thirty plus years of service, Store Directors were always given the opportunity to step-down to an Assistant Director position or transferred instead of being terminated. Plaintiffs, LaRocco and Lee, were terminated without being given the opportunity to choose a demotion to assistant manager or to be transferred to a different store.

49. Defendant systematically discriminated against and harassed Plaintiffs on the basis of their age and/or retaliated against Plaintiffs for engaging in statutorily protected activity by making internal complaints to Defendant and/or the EEOC for discrimination, harassment and/or retaliation.

FACTS: TIMOTHY CESARIO

50. Cesario restates and realleges paragraphs one through forty-four (1-44) as if fully stated herein as paragraph forty-five (45).

51. In or around April 1980, Defendant hired Cesario as a part-time Clerk at store #550, located in Glen Ellyn, Illinois.

52. During Cesario's thirty-six (36) year career with Defendant, he progressed within the company and was promoted to Store Director at store #114, located in Wheaton, Illinois.

53. On or around September 19, 2010, Defendant transferred Cesario to store #3278, located in Lombard, Illinois, wherein he was to report to District Manager, Brian Finnegan.

54. From and after September 19, 2010, Cesario reported to the following District Managers: 1) Brian Finnegan; 2) Mark Laryea; 3) David Negron; and 4) Aquanetta Dawson.

55. Cesario was never offered a severance package pursuant to Defendant's RIF.

56. On or around November 11, 2014, District Manager, Brian Finnegan ("Finnegan"), gave Cesario a performance rating of 4 SP (Consistently Meets Expectations; Satisfactorily Placed).

57. Shortly after November 11, 2014, Mark Laryea ("Laryea") replaced Finnegan as District Manager. Cesario was to then report to Laryea.

58. In the weeks leading up to December 15, 2014, Laryea placed Cesario under heightened and intense scrutiny, including visiting his store at least once a week to give criticisms and reprimands for minor flaws and issues that had never been an issue throughout Cesario's career.

59. During this same time, Laryea assigned Cesario the monumental task of revamping the produce department within one (1) week.

60. When Cesario asked for assistance as had been given to other younger Store Directors during other store projects, Laryea denied Cesario's request and told him it was "[his] problem".

61. During the produce department revamp, Laryea completely changed directions of the project and required Cesario to completely re-do the project with the same end date and no additional assistance.

62. As a result of the stress caused by Laryea, Cesario had an accident, which caused him to go on a medical leave of absence commencing on or around December 15, 2014.

63. On or around December 29, 2015, Cesario's physician released him to go back to work with temporary restrictions until January 15, 2015.

64. On or around January 3, 2015, Cesario returned to work from his medical leave of

absence.

65. On or around January 12, 2015, Cesario received his quarter two and quarter three performance reviews of 3 SP (Consistently Meets Expectations; Satisfactorily Placed) and 3 NP (Consistently Meets Expectations; Not Promotable). As a result of the latter performance review, Cesario was denied the opportunity to be promoted.

66. Despite Cesario's positive quarter two and quarter three performance reviews, Laryea and now Michael Withers ("Withers"), President of Jewel, increased their scrutiny even more of Cesario. For example, during a store inspection in early 2015, Withers and Laryea criticized and reprimanded Cesario for apple cores not being in perfect alignment.

67. In the three weeks leading up to April 21, 2015, Laryea and Withers visited Cesario's store approximately 6-7 times, separately.

68. During the same months, Cesario made a request for a transfer on two (2) separate occasions to Laryea. On those occasions, Laryea repeatedly asked Cesario "what [he should] do with [him]?" and that he felt the "store [was] too big for [him] to handle". In response, Cesario informed Laryea that he had superseded the company's expectations in regards to Earnings. Cesario further informed him that he not only had delivered those numbers for a 100% quarterly payout, but in four (4) out of the five (5) quarters, he doubled the pay to 200%. When Laryea responded that was not good enough, Cesario requested a transfer to another store and/or another store outside of the district that was smaller and/or closer to his home. Laryea immediately denied his request, stating, "that [was] not going to happen". Laryea even asked Cesario how much longer he intended on working with the company.

69. Despite denying Cesario's requests for a transfer, Laryea transferred another younger Store Director, who had had issues with the store and was given assistance by Laryea.

70. On or around April 21, 2015, Cesario went on a medical leave of absence caused solely by the stress that Laryea and Withers had subjected him to in the preceding months.

71. When Cesario left store # 3278 on or around April 21, 2015, Defendant replaced him with a much younger Store Director. On information and belief, Laryea gave him no restrictions in regards to backroom conditions, labor, earnings, etc. Despite this younger Store Director missing all line and bottom line numbers, Defendant promoted him approximately two quarters later to Operations Specialist of Produce.

72. At all relevant times, Cesario worked as a Store Director for Defendant at #3278, located in Lombard, Illinois.

73. At all times relevant, Cesario performed his job at and above a satisfactory manner and to the legitimate expectations of Defendant, consistently receiving good performance reviews.

FACTS: STEVE CIESLAK

74. Cieslak restates and realleges paragraphs one through forty-four (1-44) as if fully stated herein as paragraph sixty-nine (69).

75. In or around September 1976, Defendant hired Cieslak as a Bagger at store #4540, located in Chicago, Illinois.

76. In or around April 2007, Defendant promoted Cieslak to Jewel Store Director at store #3033, located in Chicago, Illinois overseeing and responsible for the food operation.

77. Around April 2011, Cieslak was offered a severance package pursuant to Defendant's RIF. Cieslak turned down the severance package, deciding to remain employed by Defendant.

78. Cieslak then was transferred as a Store Director for Defendant at store # #3302, located in Chicago, Illinois and then was transferred to store # 3236, located in Oak Park, Illinois.

79. At all times relevant, Cieslak performed his job in a satisfactory manner and to the legitimate expectations of Defendant, consistently receiving good performance reviews.

80. In or after April 2011, Defendant transferred Cieslak to store #3302, located in Chicago, Illinois, wherein Cieslak was to report to District Manager, Dave Negron (“Negron”).

81. Once transferred to store #3302, Cieslak was informed by the former South Area Vice President, Bill Stark (“Stark”) that he had been hand-selected by Stark personally to help in the “loss district” to turn store #3302 around.

82. In 2010, store #3302 lost approximately \$1.4 million dollars and has lost similar numbers for several consecutive years dating back to the mid-2000’s.

83. Stark promised Cieslak that due to the challenges of #3302 being a loss store, Cieslak would not be left at the store #3302 for more than a year, the best available shop managers would be transferred in, and he would have carte blanche to run the store outside the constraints of normal corporate directives to turn the store around. Despite Stark’s promises, Defendant never fulfilled any of its promises to Cieslak.

84. From and after April 2011 to the present, Cieslak reported to three (3) District Managers, including: 1) Dave Negron; 2) Steven DeSantiago; and 3) Mark Laryea. During this time, Cieslak has not only been set up to fail by Defendant, he has also been subjected to threats and warnings regarding losing his job, intimidation, harassment, retaliation for making complaints to Defendant and the EEOC regarding age discrimination, harassment and retaliation from his District Manager(s). Cieslak’s District Managers also made comments related to Cieslak’s age.

85. When Cieslak arrived to store #3302, it was one of the worst performing stores in the district. Despite Stark’s empty promises, Cieslak was still able to cut the earnings loss by over fifty (50) percent in 2011.

86. Despite Cieslak outstanding performance, in 2013, District Manager DeSantiago began criticizing and reprimanding Cieslak for minor store issues and flaws that were never before at issue. These issues were universal in all stores. Other similarly-situated Store Directors under the age of forty (40) or more than ten (10) years younger than him were not criticized or reprimanded for the same issues in their stores.

87. From and after 2013 Cieslak began to recognize that he was being treated differently from younger Store Directors. This treatment included, but was not limited to, the younger Store Directors: 1) not being criticized and reprimanded for minor store issues and flaws that were at issue in Cieslak's stores; 2) not being given negative performance reviews; 3) not being threatened with the loss of their jobs; 4) not being forced to remain in underperforming stores.

88. In or around late 2013-early 2014, DeSantiago transferred to Cieslak an Assistant Store Director, whom had been rated a two (2) at her previous store and came to Cieslak's store with several work restrictions, including but not limited to, a three (3) day work-week and a fifteen-pound lifting restriction. At one point, the Assistant Store Director went on a medical leave of absence for four to five (4-5) months, with no support given to Cieslak by DeSantiago.

89. In or around October 2014, Cieslak first requested a transfer from District Manager Laryea after he received a rating of 3 SP (Consistently Meets Expectations; Satisfactorily Placed). During that conversation, Cieslak stressed to Laryea Defendant was discriminating against him based on his age in the he was being left at store #3302, a loss store, without the opportunity to transfer. Laryea denied Cieslak's request for a transfer, informing him that he would only be transferred if Cieslak could make the earnings numbers. Laryea controlled the earnings numbers and the earnings goals in placed by Laryea were unattainable given the earnings history of the

store, new competition, and six (6) months of road construction that impacted the earnings numbers. When Cieslak requested a budget adjustment to sales and labor due to the road construction, Laryea denied his request. Thereafter, Cieslak continued to be budgeted payroll goals several thousands of dollars under guaranteed contract minimums.

90. Defendant's stores that were expecting an incoming Mariano's into the neighborhood were given the best available associates, were remodeled and became part of the elite "Blackhawk" district. This was to combat the anticipated sales losses and to retain customers. When a Mariano's was due to come into Cieslak's store's neighborhood, and even after, Defendant offered none of these to Cieslak. District Manager DeSantiago, and later District Manager Laryea, denied Cieslak's request to have the façade of the store painted to give the store a fresh look.

91. Despite Cieslak's multiple requests to be transferred, Cieslak remained at store #3302 for over four (4) years, while Defendant transferred at least six (6) younger, less experienced Store Directors.

92. In or around November 2014, Cieslak again orally complained to Laryea regarding discrimination he felt Defendant was subjecting him to based upon his age.

93. On or around January 26, 2015, Cieslak presented Rebecca Young, Human Resources Lead, a formal written complaint regarding the discrimination and harassment Defendant had been subjecting him to on the basis of his age.

94. On around January 26, 2015, Cieslak was given his first of several subsequent negative performance reviews and deemed "not promotable" by District Manager Laryea. On that date, Laryea rated Cieslak a 2 NP (Partially Meets Expectations, Not Promotable) for his third quarter performance evaluation, and subsequently placed Cieslak on a Performance Improvement Plan ("PIP").

95. In or around May 2015, Cieslak received a second negative performance review. Laryea warned Cieslak that his job was in jeopardy if he did not significantly improve.

96. On or around June 8, 2015, District Manager Laryea approached Cieslak's subordinates and Union Representative seeking negative information regarding Cieslak.

97. On or around June 26, 2015, Cieslak filed his initial Charge of Discrimination with the EEOC.

98. In retaliation for filing a Charge of Discrimination with the EEOC, on or around July 27, 2015, Defendant transferred Cieslak to store #3236, located in Oak Park, Illinois. Store #3236 was and is the smallest volume store in District 8. Store #3236 has a sales volume of at least \$140,000 less than Cieslak's prior store, store # 3302. In addition, store #3236 was not up to "company standards" but was left unchecked by Laryea, as there was no action taken against prior, younger Store Director, Hollie Abernathy (early 40's).

99. On or around December 14, 2015, Cieslak filed his Amended Charge of Discrimination with the EEOC.

100. In or around February 2016, Defendant replaced Cieslak's Assistant Store Director, with another Assistant Store Director, who was out on a medical leave of absence thereby giving Cieslak no assistance to manage the store. Thereafter, it took Defendant approximately two (2) months to respond to Cieslak's complaints regarding a lack of an Assistant Store Director. In or around April 2016, Defendant finally responded to Cieslak's pleas for help when it transferred another Assistant Store Director to replace the Assistant Store Director on medical leave.

101. Cieslak is currently employed as Store Director at store #3236.

102. At all times relevant, Cieslak performed his job in a satisfactory manner and to the legitimate expectations of Defendant, consistently receiving good performance reviews.

FACTS: GREGORY LAROCCO

103. LaRocco restates and realleges paragraphs one through forty-four (1-44) as if fully stated herein as paragraph ninety-eight (98).

104. On or around January 9, 1978, Defendant hired LaRocco as a Manager Trainee.

105. On or around 1983, Defendant promoted LaRocco to Osco Drug Store Director at store #664, located in Wheaton, Illinois.

106. In or around April 2011, LaRocco was offered a severance package pursuant to Defendant's RIF. LaRocco turned down the severance package, deciding to remain employed by Defendant.

107. In or around April 2011, Defendant transferred LaRocco to store #3284, located in Villa Park, Illinois, wherein LaRocco was to report to District Manager, Brad Boyle ("Boyle").

108. Once transferred to store #3284, LaRocco oversaw it as it went through a major remodel, and was later praised by District Manager Boyle because it had been the easiest remodel he had overseen since becoming a District Manager due to LaRocco's leadership.

109. On or around January 13, 2013, Defendant transferred LaRocco to store #3272, located in DeKalb, Illinois. LaRocco worked at store #3272 until his termination on or around August 17, 2015.

110. When LaRocco arrived to store #3272, it was one of the worst performing stores in the district. Despite the poor and failing conditions of store #3272 that LaRocco inherited, LaRocco was able to earn approximately \$600,000.00 more in 2014 and 2015 than it had in 2013.

111. Despite LaRocco's outstanding performance, in June 2014, District Manager Romanello began criticizing and reprimanding LaRocco for minor store issues and flaws that were never before at issue. These issues were universal in all stores. Other similarly-situated Store

Directors under the age of forty (40) or more than ten (10) years younger than him were not criticized or reprimanded for the same issues in their stores.

112. At all relevant times, LaRocco worked as a Store Director for Defendant at store # #3272, located in DeKalb, Illinois.

113. At all times relevant, LaRocco performed his job in a satisfactory manner and to the legitimate expectations of Defendant, consistently receiving good performance reviews.

114. From and after January 2013 until his termination on or around August 17, 2015, LaRocco reported to District Manager, Phillip Romanello (“Romanello”). During this time, LaRocco had not only been set up to fail by Defendant, he has also been subjected to threats and warnings regarding losing his job, intimidation, harassment, retaliation for making complaints to Defendant and the EEOC regarding age discrimination, harassment and retaliation from his District Manager.

115. From and after June 2014, LaRocco began to recognize that he was being treated differently from younger Store Directors. This treatment included, but was not limited to, the younger Store Directors: 1) not being criticized and reprimanded for minor store issues and flaws that were at issue in LaRocco’s stores; 2) not being given negative performance reviews; 3) not being threatened with the loss of their jobs; 4) not being forced to remain in underperforming stores.

116. In addition, District Manager Romanello aided younger Store Directors who were having performance issues by sending in his team of Operational Specialists to assist the Store Directors. If LaRocco was having such performance issues, no such assistance was provided to LaRocco.

117. On around June 30, 2014, LaRocco was given his first of several subsequent

negative performance reviews and deemed “not promotable” by District Manager Romanello. On that date, Romanello rated LaRocco a 2 NP (Partially Meets Expectations, Not Promotable).

118. On or around October 21, 2014, Romanello gave LaRocco a second unwarranted, negative performance review. Romanello warned LaRocco that his job was in jeopardy if he did not significantly improve.

119. On or around May 29, 2015, Romanello gave LaRocco another unwarranted, negative performance review, rating him a 1 NP (Unacceptable, Not Promotable).

120. On or around June 29, 2015, LaRocco made a formal, written complaint against Romanello based on him discriminating against and intimidating LaRocco.

121. On or around August 6, 2015, LaRocco filed a Charge of Discrimination with the EEOC against Defendant based on age discrimination and/or harassment he had been subjected to during his employment.

122. In retaliation for filing a Charge of Discrimination with the EEOC and his internal complaints to Defendant regarding age discrimination and harassment, on or around August 17, 2015, Romanello gave LaRocco another unwarranted, negative performance review, rating him a 1 NP (Unacceptable, Not Promotable).

123. On or around August 17, 2015, Defendant terminated LaRocco’s employment.

FACTS: JAMES LEE

124. Lee restates and realleges paragraphs one through forty-four (1-44) as if fully stated herein as paragraph one-hundred-nineteen (119).

125. On or around June 4, 1979, Defendant hired Lee as a Manager Trainee.

126. On or around August 1984, Defendant promoted Lee to Osco Drug Store Director at store #123, located in Chicago, Illinois.

127. In or around April 2011, Lee was offered a severance package pursuant to Defendant's RIF. Lee turned down the severance package, deciding to remain employed by Defendant.

128. In or around April 2011, Defendant transferred Lee to Store Director, wherein Lee was to oversee and be responsible for the food operations of Defendant.

129. From and after April 2011, Lee reported to the following District Managers: 1) Aquanetta Dawson; 2) Ron Harris; 3) Dave Negron; 4) Steve DeSantiago; 5) Mark Laryea and 6) Abram Ruiz.

130. In the months after April 2011, Defendant sent out large training materials to all Store Directors, including Lee. There were no training sessions for the manuals that were sent out.

131. District Manager, Aquanetta Dawson ("Dawson"), was to have reviewed and tested the training material with Lee. She failed to do so.

132. Thereafter, Defendant sent Lee numerous emails requiring him to sign off on the training materials that he had received but was not trained in. Lee informed Defendant that he would not sign off on the training material because he never received the training by District Manager Dawson.

133. In or around April 2011, Defendant transferred Lee to store #3288, located in Oak Park, Illinois.

134. At the time Defendant had transferred Lee to store #3288, the store had been underperforming and failing, and had been unprofitable for several years. Despite the store's obstacles, Lee was able to substantially improve sales earnings and customer service scores.

135. In or around August 2012, Defendant transferred Lee to store #3097, located in Downers Grove, Illinois. During Lee's tenure at store #3097, he increases earnings and received

positive performance reviews and bonuses as a result.

136. In or around February 2014, DeSantiago transferred Lee to store #3170, located in Chicago, Illinois. Lee remained at store #3170 until his constructive discharge on or around March 28, 2015.

137. At the time Defendant had transferred Lee to store #3170, the store had been running without a Store Director for approximately 6-8 months, had been underperforming and failing, and had been unprofitable for several years.

138. In or around April 2014, DeSantiago removed Lee's Assistant Store Director and placed him in a top five (5) performing store and replaced him with an Assistant Store Director who only had approximately six (6) months of experience.

139. On or around June 6, 2014, District Manager, Ron Harris ("Harris") gave Lee his annual performance reviews for 2012 and 2013, receiving a rating of 4 SP (Consistently Meets and Often Exceeds Expectations, Satisfactorily Placed) and a rating of 3 SP (Consistently Meets Expectations, Satisfactorily Placed), respectively.

140. Because Lee was rated a 3 SP (Consistently Meets Expectations, Satisfactorily Placed), he was due and owed a bonus of \$1,500.00 on or around June 5, 2014.

141. On or around June 16, 2014, Lee went on a medical leave of absence.

142. On or around July 20, 2014, Lee returned from his medical leave of absence.

143. From and after July 2014, Lee began to recognize that he was being treated differently from younger Store Directors by District Manager DeSantiago. This treatment included, but was not limited to, the younger Store Directors: 1) not being criticized and reprimanded for minor store issues and flaws that were at issue in Lee's stores; and 2) not being given negative performance reviews.

144. Upon Lee's return, Lee notified his new District Manager Laryea on three separate occasions that he was due and owed a bonus from his June 6, 2013 annual performance review rating. On each occasion, Laryea informed Lee that: 1) he would have to get back to Lee regarding his request; 2) he had forgotten to inquire regarding the bonus; and 3) Lee would not receive his bonus because his performance rating was instantaneously and retroactively being lowered from a 3 to a 2.

145. On or around July 25, 2014, five (5) days after returning from medical leave for over thirty (30) days, Laryea arrived at the store and took Lee into Lee's office.

146. In Lee's office, Laryea asked Lee what he was going to do to fix the poor store conditions. When Lee responded that he has just returned to work from a thirty (30) day medical leave of absence with a forty (40) hour work-week restriction, Laryea replied that it would be difficult for Lee and told Lee to quit his job and/or retire to make it easy on himself. When Lee responded that he could not make that decision at the moment, as he needed to speak to his wife first, Laryea slid his cell phone across the table to Lee and asked Lee to call his wife then and there.

147. Laryea was aware of Lee's work restrictions in place by Lee's physician.

148. Nonetheless, Laryea failed to accommodate Lee's disability by forcing Lee to stay late on several occasions, wherein Laryea would berate, humiliate and harass Lee.

149. On or around August 14, 2014, Lee was given his first negative performance review rating of 2 NP (Partially Meets Expectations, Not Promotable) and deemed "not promotable" by District Manager Laryea.

150. On or around August 23, 2014, Laryea asked Lee what he was doing in response to the poor work conditions, Lee responded that it was difficult to keep up due to the forty (40) hour

work-week restriction in place, and that his Assistant Store Director had been on vacation. Laryea then told Lee that when Laryea returned, Lee had been give him an answer about what Lee was going to do. Laryea again indicated that Lee should quit or retire from his position as Store Director.

151. On or around September 23, 2014, Lee again on a medical leave of absence.

152. On or around January 4, 2015, Lee returned to work from his medical leave of absence.

153. On or around January 6, 2015, when Operations Specialist Jerry Rifenkark (“Rifenkark”) visited Lee’s store, Rifenkark asked Lee “how many more years are you going to work?”

154. On or around January 8, 2015, Lee sent an email to Defendant complaining of harassment and discrimination by District Manager Laryea, District Manager DeSantiago, and Operations Specialist Rifenkark.

155. When District Loss Prevention Manager, Robert Kelley (“Kelley”), interviewed Lee regarding his January 8, 2015 complaint, Kelley told Lee that “there was not much use in saying anything about [his] complaint about DeSantiago because he was no longer with the company.” Kelley then urged Lee to withdraw his complaint against DeSantiago for that reason alone.

156. On or around March 28, 2015, Lee was constructively discharged from Defendant because the working conditions were so intolerable and/or unbearable that Lee could no longer work at Defendant.

COUNT I

**(TIMOTHY CESARIO, STEVE CIESLAK, GREGORY LAROCCO and JAMES LEE:
DISPARATE IMPACT IN VIOLATION OF THE AGE DISCRIMINATION IN
EMPLOYMENT ACT, 29 U.S.C.A. §621 *et. seq.*)**

157. Cesario, Cieslak, LaRocco, and Lee restates and realleges paragraphs one through one-hundred-fifty-one (1-151) as if fully stated herein as paragraph one-hundred-fifty-two (152).

158. Cesario, Cieslak, LaRocco, and Lee are members of a protected class within the meaning of the ADEA, wherein they are over the age of forty (40).

159. At all relevant times, Cesario, Cieslak, LaRocco, and Lee were meeting Defendant's legitimate business expectations.

160. In early 2011, Defendant consolidated its store management from a dual store management to a single store format.

161. This single store format policy put managers that were previously trained and experienced in managing the drug operations of Osco stores in charge of the food and produce operations of Jewel stores and it put managers that were previously trained and experienced in managing the food and produce operations of Jewel stores in charge of the drug operations of Osco stores.

162. At the same time in early 2011, Defendant began offering buyouts to store managers.

163. Managers with less seniority that did not accept the buy-outs were involuntarily terminated.

164. Defendant then began a pattern and practice of moving those remaining managers that did not accept the buyout to underperforming stores that received more scrutiny.

165. Defendant began the pattern and practice of not offering adequate training in the sale of products that the managers were not familiar with to the single store managers that were now charged with supervising both Jewel stores and Osco stores.

166. Defendant held these store managers to a standard of accountability that was unattainable because of their lack of training and experience managing in the single store format.

167. The lack adequate training and of a consistent standard of accountability disproportionately affected older more tenured store managers because those store managers have had a longer track record of success working under the dual store model and are more likely to believe that their management style and approach to their job would transfer equally to the new store regardless of the fundamental differences in management it takes to successfully run a drug store versus a produce store.

168. This pattern and practice resulted in Defendant subjecting Cesario, Cieslak, LaRocco, and Lee to age discrimination by giving them less advantageous employment terms and conditions than given to younger employee(s), while their superior (aged in the 30's) at the same time set unreasonable daily store performance achievement goals, callously criticized immaterial store operations, and demanded excessive hours of work well over 8-10 hours per day.

169. Defendants and its agents have willfully and intentionally discriminated against Cesario, Cieslak, LaRocco, and Lee on the basis of their age in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C.A. §§621 *et. seq.*

170. Defendant failed to comply with its statutory duty to take all reasonable and necessary steps to eliminate discrimination from the workplace and to prevent it from occurring in the future. 42 U.S.C. § 2000e.

171. As a direct and proximate result of Defendant's discrimination against Cesario, Cieslak, LaRocco, and Lee, they have suffered and will continue to suffer damage including loss of wages and benefits, liquidated damages, front pay, pain and suffering, and extreme and severe mental anguish and emotional distress. Cesario, Cieslak, LaRocco, and Lee are thereby entitled to general and compensatory damages in amounts to be proven at trial.

172. The willful nature of the violations, committed with malice or reckless indifference to the federally protected rights of Cesario, Cieslak, LaRocco, and Lee, warrant statutory punitive damages pursuant to 42 U.S.C. § 1981a(b)(1).

173. Cesario, Cieslak, LaRocco, and Lee also seeks prejudgment interest, post-judgment interest, and costs including reasonable statutory attorneys' fees and expert witness fees.

WHEREFORE, Plaintiff, TIMOTHY CESARIO, STEVE CIESLAK, GREGORY LAROCCO and JAMES LEE, pray for judgment in their favor and against Defendant and asks that the court award them direct and consequential damages, lost wages and benefits, liquidated damages, front pay, back pay, punitive damages pursuant to 42 U.S.C. § 1981a(b)(1), reasonable statutory attorneys' fees, expert witness fees, and costs, and such other relief as the Court may find appropriate.

COUNT II

(TIMOTHY CESARIO: DISPARATE TREATMENT IN VIOLATION OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S.C.A. §621 *et. seq.*)

174. Cesario restates and realleges paragraphs one through sixty-eight (1-68) as if fully stated herein as paragraph one-hundred-sixty-nine (169).

175. Cesario is a member of a protected class within the meaning of the ADEA, wherein he is over the age of forty (40).

176. At all relevant times, Cesario was meeting Defendant's legitimate business expectations.

177. Defendant subjected Cesario to age discrimination by giving him less advantageous employment terms and conditions than given to younger employee(s).

178. The discrimination included, but was not limited to: 1) transferring Cesario to an underperforming store; 2) criticizing and reprimanding Cesario's performance; 3) building a case for Cesario's termination; 4) instituting a campaign of unreasonable and unwarranted discipline against Cesario; 5) giving unwarranted, negative performance reviews to Cesario; 6) denying Cesario bonuses based on the unwarranted, negative performance reviews; 7) giving Cesario unattainable sales goals; 8) giving Cesario write-ups for minor flaws and issues that were never before at issue in his career; 9) denying Cesario the opportunity to transfer to another store; 10) failing to train and/or failing to sufficiently train Cesario for the single store Director Position.

179. Defendants and its agents have willfully and intentionally discriminated against Cesario on the basis of his age in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C.A. §§621 *et. seq.*

180. Defendant failed to comply with its statutory duty to take all reasonable and necessary steps to eliminate discrimination from the workplace and to prevent it from occurring in the future. 42 U.S.C. § 2000e.

181. As a direct and proximate result of Defendant's discrimination against Cesario, he has suffered and will continue to suffer damage including loss of wages and benefits, liquidated damages, front pay, pain and suffering, and extreme and severe mental anguish and emotional distress. Cesario is thereby entitled to general and compensatory damages in amounts to be proven at trial.

182. The willful nature of the violations, committed with malice or reckless indifference to the federally protected rights of Cesario, warrant statutory punitive damages pursuant to 42 U.S.C. § 1981a(b)(1).

183. Cesario also seeks prejudgment interest, post-judgment interest, and costs including reasonable statutory attorneys' fees and expert witness fees.

WHEREFORE, Plaintiff, TIMOTHY CESARIO, prays for judgment in his favor and against Defendant and asks that the court award him direct and consequential damages, lost wages and benefits, liquidated damages, front pay, back pay, punitive damages pursuant to 42 U.S.C. § 1981a(b)(1), reasonable statutory attorneys' fees, expert witness fees, and costs, and such other relief as the Court may find appropriate.

COUNT III

(TIMOTHY CESARIO: RETALIATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12101 *et. seq.*)

184. Cesario restates and realleges paragraphs one through sixty-eight (1-68) as if fully stated herein as paragraph one-hundred-seventy-nine (179).

185. Cesario was disabled within the meaning of the ADA.

186. Cesario was qualified to perform the essential functions of his job with reasonable accommodation.

187. Defendant and its agents willfully and intentionally discriminated against Cesario based upon his alleged inability to physically perform his duties in violation of federal law, the ADA.

188. As a direct and proximate result of Defendant's discrimination against Cesario, he has suffered and will continue to suffer damage including, wages and benefits, liquidated damages, front pay, pain and suffering, and extreme and severe mental anguish and emotional distress;

injunctive relief to reverse and to prevent noncompliance with its duties under law. Cesario is thereby entitled to general and compensatory damages in amounts to be determined at trial.

189. Cesario seeks prejudgment interest, post-judgment interest, and costs including reasonable statutory attorneys' fees and expert witness fees.

WHEREFORE, Plaintiff, TIMOTHY CESARIO prays for judgment in his favor and against Defendant and asks that the court award him direct and consequential damages, lost wages and benefits, liquidated damages, front pay, back pay, punitive damages pursuant to 42 U.S.C. § 1981a(b)(1), reasonable statutory attorneys' fees, expert witness fees, and costs, and such other relief as the Court may find appropriate.

COUNT IV

(TIMOTHY CESARIO: TORT-INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS)

190. Cesario restates and realleges paragraphs one through sixty-eight (1-68) as if fully stated herein as paragraph one-hundred-eighty-five (185).

191. Defendant JEWEL FOOD STORES, by and through its agents, engaged in, instigated, and directed a course of extreme and outrageous conduct with the intention of causing, or reckless disregard of the probability of causing, emotional distress to Plaintiff during Plaintiff's employment with Defendant.

192. The severe emotional distress was caused by, but was not limited to: 1) transferring Cesario to an underperforming store; 2) criticizing and reprimanding Cesario's performance; 3) building a case for Cesario's termination; 4) instituting a campaign of unreasonable and unwarranted discipline against Cesario; 5) giving unwarranted, negative performance reviews to Cesario; 6) denying Cesario bonuses based on the unwarranted, negative performance reviews; 7) giving Cesario unattainable sales goals; 8) giving Cesario write-ups for minor flaws and issues that

were never before at issue in his career; 9) denying Cesario the opportunity to transfer to another store; 10) failing to train and/or failing to sufficiently train Cesario for the single store Director Position.

193. Defendants harmed Plaintiff because those actions caused him to suffer humiliation, embarrassment, mental anguish, and emotional distress. The actions of Defendant by and through its agents injured Plaintiff's mind and body.

194. As a proximate result of the acts alleged herein Plaintiff suffered severe or extreme emotional distress, entitling him to damages in an amount to be proven at trial.

WHEREFORE, Plaintiff Cesario requests the following relief from Defendant; damages in an amount to be determined by jury, including pre- and post-judgment interest, and punitive damages, costs and attorney's fees, including expert witness fees, and such other relief as is just and proper.

COUNT V

(STEVE CIESLAK: DISPARATE TREATMENT IN VIOLATION OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S.C.A. §621 *et. seq.*)

195. Cieslak restates and realleges paragraphs one through forty-four(1-44) and sixty-nine through ninety-seven (69-97) as if fully stated herein as paragraph one-hundred-ninety (190).

196. Cieslak is a member of a protected class within the meaning of the ADEA, wherein he is over the age of forty (40).

197. At all relevant times, Cieslak was meeting Defendant's legitimate business expectations.

198. Defendant subjected Cieslak to age discrimination by giving him less advantageous employment terms and conditions than given to younger employee(s).

199. The discrimination included, but was not limited to: 1) transferring Cieslak to an underperforming and failing stores; 2) criticizing and reprimanding Cieslak's performance; 3) building a case for Cieslak's termination; 4) instituting a campaign of unreasonable and unwarranted discipline against Cieslak; 5) giving unwarranted, negative performance reviews to Cieslak; 6) denying Cieslak bonuses based on the unwarranted, negative performance reviews; 7) giving Cieslak unattainable sales goals; 8) giving Cieslak write-ups for minor flaws and issues that were never before at issue in his career; 9) denying Cieslak the opportunity to transfer to another store; 10) failing to train and/or failing to sufficiently train Cieslak for the single store Director Position.

200. Defendants and its employees and/or agents have willfully and intentionally discriminated against Cieslak on the basis of his age in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C.A. §§621 *et. seq.*

201. Defendant failed to comply with its statutory duty to take all reasonable and necessary steps to eliminate discrimination from the workplace and to prevent it from occurring in the future. 42 U.S.C. § 2000e.

202. As a direct and proximate result of Defendant's discrimination against Cieslak, he has suffered and will continue to suffer damage including loss of wages and benefits, liquidated damages, front pay, pain and suffering, and extreme and severe mental anguish and emotional distress. Cieslak is thereby entitled to general and compensatory damages in amounts to be proven at trial.

203. The willful nature of the violations, committed with malice or reckless indifference to the federally protected rights of Cieslak, warrant statutory punitive damages pursuant to 42 U.S.C. § 1981a(b)(1).

204. Cieslak also seeks prejudgment interest, post-judgment interest, and costs including reasonable statutory attorneys' fees and expert witness fees.

WHEREFORE, Plaintiff, STEVE CIESLAK, prays for judgment in his favor and against Defendant and asks that the court award him direct and consequential damages, lost wages and benefits, liquidated damages, front pay, back pay, punitive damages pursuant to 42 U.S.C. § 1981a(b)(1), reasonable statutory attorneys' fees, expert witness fees, and costs, and such other relief as the Court may find appropriate.

COUNT VI

(STEVE CIESLAK: RETALIATION IN VIOLATION OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S.C.A. §621 *et. seq.*)

205. Cieslak restates and realleges paragraphs one through forty-four (1-44) and sixty-nine through ninety-seven (69-97) as if fully stated herein as paragraph two hundred (200).

206. Cieslak engaged in statutorily protected activity by making informal and formal complaints to Defendant and by filing his Charge(s) of Discrimination (Charge and Amended Charge) with the EEOC against Defendant for discrimination, harassment, retaliation and failure to train that Defendant had subjected Cieslak to throughout his employment with Defendant.

207. Defendant retaliated against Cieslak for engaging in the aforementioned statutorily protected activity by: 1) giving Cieslak unwarranted, negative performance reviews; 2) denying Cieslak bonuses based on the unwarranted, negative performance reviews; 3) subjecting Cieslak to further heightened scrutiny and excessive micromanaging; 4) creating a hostile work environment for Cieslak to work in; 4) transferring Cieslak to the smallest volume store in the

district, store #3236; 4) replacing Cieslak's Assistant Store Director with another Assistant Store Director who was out on a medical leave of absence, thereby providing Cieslak to run the store for approximately two (2) months; and 5) giving Cieslak unattainable sales goals, thereby setting him up to fail.

208. There is a causal connection between the statutorily protected activity and Defendant's action.

209. As a direct and proximate result of Defendant's retaliation against Cieslak, he has suffered and will continue to suffer damages including, pain and suffering, and extreme and severe mental anguish and emotional distress arising from a hostile work environment; losses of monetary compensation vis-à-vis lost bonuses; and injunctive relief to reverse and to prevent noncompliance with its duties under law. Cieslak is thereby entitled to general and compensatory damages in amounts to be proven at trial.

210. Cieslak seeks prejudgment interest, post-judgment interest, and costs including reasonable statutory attorneys' fees and expert witness fees.

WHEREFORE, Plaintiff, STEVE CIESLAK, prays for judgment in his favor and against Defendant and that the court award him direct and consequential damages, statutory attorneys' fees, lost wages and benefits, liquidated damages, front pay, prejudgment interest, post-judgment interest, and costs in this action including reasonable statutory attorneys' fees and expert witness fees, and grant such other relief as the Court may find appropriate.

COUNT VII

(STEVE CIESLAK: TORT-INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

211. Cieslak restates and realleges paragraphs one through forty-four (1-44) and sixty-nine through ninety-seven (69-97) as if fully stated herein as paragraph two-hundred-six (206).

212. Defendant JEWEL FOOD STORES, by and through its agents, engaged in, instigated, and directed a course of extreme and outrageous conduct with the intention of causing, or reckless disregard of the probability of causing, emotional distress to Plaintiff during Plaintiff's employment with Defendant.

213. The severe emotional distress was caused by, but was not limited to: 1) giving Cieslak unwarranted, negative performance reviews; 2) denying Cieslak bonuses based on the unwarranted, negative performance reviews; 3) subjecting Cieslak to further heightened scrutiny and excessive micromanaging; 4) creating a hostile work environment for Cieslak to work in; 4) transferring Cieslak to the smallest volume store in the district, store #3236; 4) replacing Cieslak's Assistant Store Director with another Assistant Store Director who was out on a medical leave of absence, thereby providing Cieslak to run the store for approximately two (2) months; and 5) giving Cieslak unattainable sales goals, thereby setting him up to fail.

214. Defendants harmed Plaintiff because those actions caused him to suffer humiliation, embarrassment, mental anguish, and emotional distress. The actions of Defendant by and through its agents injured Plaintiff's mind and body.

215. As a proximate result of the acts alleged herein Plaintiff suffered severe or extreme emotional distress, entitling him to damages in an amount to be proven at trial.

WHEREFORE, Plaintiff Cieslak requests the following relief from Defendant; damages in an amount to be determined by jury, including pre- and post-judgment interest, and punitive

damages, costs and attorney's fees, including expert witness fees, and such other relief as is just and proper.

COUNT VIII

(GREGORY LAROCCO: DISPARATE TREATMENT IN VIOLATION OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S.C.A. §621 *et. seq.*)

216. LaRocco restates and realleges paragraphs one through forty-four (1-44) and ninety-eight through one-hundred-eighteen (98-118) as if fully stated herein as paragraph two-hundred-eleven (211).

217. LaRocco is a member of a protected class within the meaning of the ADEA, wherein he is over the age of forty (40).

218. At all relevant times, LaRocco was meeting Defendant's legitimate business expectations.

219. Defendant subjected LaRocco age discrimination by giving him less advantageous employment terms and conditions than given to younger employee(s).

220. The discrimination included, but was not limited to: 1) transferring LaRocco to an underperforming and failing store; 2) criticizing and reprimanding LaRocco's performance; 3) building a case for LaRocco's termination; 4) instituting a campaign of unreasonable and unwarranted discipline against LaRocco; 5) giving unwarranted, negative performance reviews to LaRocco; 6) denying LaRocco bonuses based on the unwarranted, negative performance reviews; 7) giving LaRocco write-ups for minor flaws and issues that were never before at issue in his career; 8) providing assistance to younger Store Directors who were having performance issues, while denying LaRocco assistance; 9) failing to train and/or failing to sufficiently train LaRocco for the single store Director Position.

221. Defendants and its agents have willfully and intentionally discriminated against LaRocco on the basis of his age in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C.A. §§621 *et. seq.*

222. Defendant failed to comply with its statutory duty to take all reasonable and necessary steps to eliminate discrimination from the workplace and to prevent it from occurring in the future. 42 U.S.C. § 2000e.

223. As a direct and proximate result of Defendant's discrimination against LaRocco, he has suffered and will continue to suffer damage including loss of wages and benefits, liquidated damages, front pay, pain and suffering, and extreme and severe mental anguish and emotional distress. LaRocco is thereby entitled to general and compensatory damages in amounts to be proven at trial.

224. The willful nature of the violations, committed with malice or reckless indifference to the federally protected rights of LaRocco, warrant statutory punitive damages pursuant to 42 U.S.C. § 1981a(b)(1).

225. LaRocco also seeks prejudgment interest, post-judgment interest, and costs including reasonable statutory attorneys' fees and expert witness fees.

WHEREFORE, Plaintiff, GREGORY LAROCCO, prays for judgment in his favor and against Defendant and asks that the court award him direct and consequential damages, lost wages and benefits, liquidated damages, front pay, back pay, punitive damages pursuant to 42 U.S.C. § 1981a(b)(1), reasonable statutory attorneys' fees, expert witness fees, and costs, and such other relief as the Court may find appropriate.

COUNT IX

(GREGORY LAROCCO: RETALIATION IN VIOLATION OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S.C.A. §621 *et. seq.*)

226. LaRocco restates and realleges paragraphs one through forty-four (1-44) and ninety-eight through one-hundred-eighteen (98-118) as if fully stated herein as paragraph two-hundred-twenty-one (221).

227. LaRocco engaged in statutorily protected activity by making informal and formal complaints to Defendant and by filing his Charge of Discrimination with the EEOC against Defendant for discrimination, harassment and retaliation Defendant had subjected LaRocco to throughout his employment with Defendant.

228. Defendant retaliated against LaRocco for engaging in the statutorily protected activity by: 1) giving unwarranted, negative performance reviews to LaRocco; 2) denying LaRocco bonuses based on the unwarranted, negative performance reviews; and 3) terminating LaRocco's employment.

229. There is a causal connection between the statutorily protected activity and Defendant's action.

230. As a direct and proximate result of Defendant's retaliation against LaRocco, he has suffered and will continue to suffer damages including, losses of monetary compensation vis-à-vis lost bonuses; loss of wages and benefits, liquidated damages, pain and suffering, and extreme and severe mental anguish and emotional distress; and injunctive relief to reverse and to prevent noncompliance with its duties under law. LaRocco is thereby entitled to general and compensatory damages in amounts to be proven at trial.

231. LaRocco seeks prejudgment interest, post-judgment interest, and costs including reasonable statutory attorneys' fees and expert witness fees.

WHEREFORE, Plaintiff, GREGORY LAROCCO, prays for judgment in his favor and against Defendant and that the court award him direct and consequential damages, statutory

attorneys' fees, lost wages and benefits, liquidated damages, front pay, prejudgment interest, post-judgment interest, and costs in this action including reasonable statutory attorneys' fees and expert witness fees, and grant such other relief as the Court may find appropriate.

COUNT X

(GREGORY LAROCCO: TORT-INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

232. LaRocco restates and realleges paragraphs one through forty-four (1-44) and ninety-eight through one-hundred-eighteen (98-118) as if fully stated herein as paragraph two-hundred-twenty-seven (227).

233. Defendant JEWEL FOOD STORES, by and through its agents, engaged in, instigated, and directed a course of extreme and outrageous conduct with the intention of causing, or reckless disregard of the probability of causing, emotional distress to Plaintiff during Plaintiff's employment with Defendant.

234. The severe emotional distress was caused by, but was not limited to: 1) transferring LaRocco to an underperforming and failing store; 2) criticizing and reprimanding LaRocco's performance; 3) building a case for LaRocco's termination; 4) instituting a campaign of unreasonable and unwarranted discipline against LaRocco; 5) giving unwarranted, negative performance reviews to LaRocco; 6) denying LaRocco bonuses based on the unwarranted, negative performance reviews; 7) giving LaRocco write-ups for minor flaws and issues that were never before at issue in his career; 8) providing assistance to younger Store Directors who were having performance issues, while denying LaRocco assistance; 9) failing to train and/or failing to sufficiently train LaRocco for the single store Director Position.

235. Defendants harmed Plaintiff because those actions caused him to suffer humiliation, embarrassment, mental anguish, and emotional distress. The actions of Defendant by and through its agents injured Plaintiff's mind and body.

236. As a proximate result of the acts alleged herein Plaintiff suffered severe or extreme emotional distress, entitling him to damages in an amount to be proven at trial.

WHEREFORE, Plaintiff LaRocco requests the following relief from Defendant; damages in an amount to be determined by jury, including pre- and post-judgment interest, and punitive damages, costs and attorney's fees, including expert witness fees, and such other relief as is just and proper.

COUNT XI

(JAMES LEE: DISPARATE TREATMENT IN VIOLATION OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S.C.A. §621 *et. seq.*)

237. Lee restates and realleges paragraphs one through forty-four (1-44) and one-hundred-nineteen through one-hundred-fifty-one (119-151) as if fully stated herein as paragraph two-hundred-thirty-two (232).

238. Lee is a member of a protected class within the meaning of the ADEA, wherein he is over the age of forty (40).

239. At all relevant times, Lee was meeting Defendant's legitimate business expectations.

240. Defendant subjected Lee age discrimination by giving him less advantageous employment terms and conditions than given to younger employee(s).

241. The discrimination included, but was not limited to: 1) transferring Lee to an underperforming and failing store; 2) criticizing and reprimanding Lee's performance; 3) building a case for Lee's termination; 4) instituting a campaign of unreasonable and unwarranted discipline

against Lee; 5) giving unwarranted, negative performance reviews to Lee; 6) denying Lee bonuses based on earned positive performance review; 7) denying Lee bonuses based on the unwarranted, negative performance reviews; 8) giving Lee unattainable sales goals; 9) giving Lee write-ups for minor flaws and issues that were never before at issue in his career; and 10) failing to train and/or failing to sufficiently train Lee for the single store Director Position.

242. Defendants and its agents have willfully and intentionally discriminated against Lee on the basis of his age in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C.A. §§621 *et. seq.*

243. Defendant failed to comply with its statutory duty to take all reasonable and necessary steps to eliminate discrimination from the workplace and to prevent it from occurring in the future. 42 U.S.C. § 2000e.

244. As a direct and proximate result of Defendant's discrimination against Lee, he has suffered and will continue to suffer damage including loss of wages and benefits, liquidated damages, front pay, pain and suffering, and extreme and severe mental anguish and emotional distress. Lee is thereby entitled to general and compensatory damages in amounts to be proven at trial.

245. The willful nature of the violations, committed with malice or reckless indifference to the federally protected rights of Lee, warrant statutory punitive damages pursuant to 42 U.S.C. § 1981a(b)(1).

246. Lee also seeks prejudgment interest, post-judgment interest, and costs including reasonable statutory attorneys' fees and expert witness fees.

WHEREFORE, Plaintiff, JAMES LEE, prays for judgment in his favor and against Defendant and asks that the court award him direct and consequential damages, lost wages and

benefits, liquidated damages, front pay, back pay, punitive damages pursuant to 42 U.S.C. § 1981a(b)(1), reasonable statutory attorneys' fees, expert witness fees, and costs, and such other relief as the Court may find appropriate.

COUNT XII

(JAMES LEE: RETALIATION IN VIOLATION OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S.C.A. §621 *et. seq.*)

247. Lee restates and realleges paragraphs one through forty-four (1-44) and one-hundred-nineteen through one-hundred-fifty-one (119-151) as if fully stated herein as paragraph two-hundred-forty-two (242).

248. Lee engaged in statutorily protected activity by making informal and formal complaints to Defendant regarding discrimination and harassment he had been subjected to by his superiors throughout his employment.

249. Defendant retaliated Lee for engaging in the statutorily protected activity by: 1) giving Lee unwarranted, negative performance reviews; 2) denying Lee bonuses based on the unwarranted, negative performance reviews; 3) subjecting Lee to further heightened scrutiny and excessive micromanaging; 4) creating a hostile work environment for Lee to work in; 4) constructively discharging Lee.

250. There is a causal connection between the statutorily protected activity and Defendant's action.

251. As a direct and proximate result of Defendant's discrimination against Lee, he has suffered and will continue to suffer damage including loss of wages and benefits, liquidated damages, front pay, pain and suffering, and extreme and severe mental anguish and emotional distress. Lee is thereby entitled to general and compensatory damages in amounts to be proven at trial.

252. Lee seeks prejudgment interest, post-judgment interest, and costs including reasonable statutory attorneys' fees and expert witness fees.

WHEREFORE, Plaintiff, JAMES LEE, prays for judgment in his favor and against Defendant and that the court award him direct and consequential damages, statutory attorneys' fees, lost wages and benefits, liquidated damages, front pay, prejudgment interest, post-judgment interest, and costs in this action including reasonable statutory attorneys' fees and expert witness fees, and grant such other relief as the Court may find appropriate.

COUNT XIII

(JAMES LEE: DISABILITY DISCRIMINATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12101 *et. seq.*)

253. Lee restates and realleges paragraphs one through forty-four (1-44) and one-hundred-nineteen through one-hundred-fifty-one (119-151) as if fully stated herein as paragraph two-hundred-forty-eight (248).

254. Lee was disabled within the meaning of the ADA.

255. Lee was qualified to perform the essential functions of his job with reasonable accommodation.

256. Due to Lee's disability, Defendant took adverse action against Lee when it created a hostile work environment that resulted in Defendant Lee's constructive discharge.

257. Defendant and its employees and/or agents willfully and intentionally discriminated against Lee based upon his alleged inability to physically perform his duties in violation of federal law, the ADA.

258. As a direct and proximate result of Defendant's discrimination against Lee, he has suffered and will continue to suffer damage including, wages and benefits, liquidated damages, front pay, pain and suffering, and extreme and severe mental anguish and emotional distress;

injunctive relief to reverse and to prevent noncompliance with its duties under law. Lee is thereby entitled to general and compensatory damages in amounts to be determined at trial.

259. Lee seeks prejudgment interest, post-judgment interest, and costs including reasonable statutory attorneys' fees and expert witness fees.

WHEREFORE, Plaintiff, JAMES LEE, prays for judgment in his favor and against Defendant and asks that the court award him direct and consequential damages, lost wages and benefits, liquidated damages, front pay, back pay, punitive damages pursuant to 42 U.S.C. § 1981a(b)(1), reasonable statutory attorneys' fees, expert witness fees, and costs, and such other relief as the Court may find appropriate.

COUNT XIV

(JAMES LEE: FAILURE TO ACCOMODATE IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12101 *et. seq.*)

260. Lee restates and realleges paragraphs one through forty-four (1-44) and one-hundred-nineteen through one-hundred-fifty-one (119-151) as if fully stated herein as paragraph two-hundred-fifty-five (255).

261. Lee was disabled within the meaning of the ADA.

262. Lee was a qualified individual with a disability.

263. Defendant was aware of Lee's disability vis-à-vis Lee's physicians who submitted return to work recommendations with work restrictions, including but not limited to, a forty (40) hour work-week.

264. Despite Lee's work restrictions in placed, Defendant failed to accommodate Lee's work restrictions in place, forcing Lee to work in violation of them. Defendants failed to provide a reasonable accommodation to Lee.

265. As a direct and proximate result of Defendant's failure to accommodate Lee, he has suffered and will continue to suffer damage including, wages and benefits, liquidated damages, front pay, pain and suffering, and extreme and severe mental anguish and emotional distress; and injunctive relief to reverse and to prevent noncompliance with its duties under law. Lee is thereby entitled to general and compensatory damages in amounts to be determined at trial.

266. Lee seeks prejudgment interest, post-judgment interest, and costs including reasonable statutory attorneys' fees and expert witness fees.

WHEREFORE, Plaintiff, JAMES LEE, prays for judgment in his favor and against Defendant and asks that the court award him direct and consequential damages, future medical expenses, past medical expenses, lost wages and benefits, liquidated damages, punitive damages pursuant to 42 U.S.C. § 1981a(b)(1), front pay, back pay, reasonable statutory attorneys' fees, expert witness fees, and costs, and such other relief as the Court may find appropriate.

COUNT XV

**(JAMES LEE: RETALIATION IN VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT, 42 U.S.C. § 12101 *et. seq.*)**

267. Lee restates and realleges paragraphs one through forty-four (1-44) and one-hundred-nineteen through one-hundred-fifty-one (119-151) as if fully stated herein as paragraph two-hundred-sixty-two (262).

268. Lee was disabled within the meaning of the ADA.

269. Lee was qualified to perform the essential functions of his job with reasonable accommodation.

270. Lee engaged in statutorily protected activity by requesting reasonable accommodations, including but not limited to, medical leave and accommodations (forty (40) work week).

271. Defendant retaliated against Lee when it: 1) forced him to work in violation of his restrictions on several occasions; 2) denied Lee his bonus; 3) subjected Lee to harassment and humiliation, thereby creating a hostile work environment; and 4) constructively discharged Lee.

272. There is a causal connection between the statutorily protected activity and Defendant's action.

273. As a direct and proximate result of Defendant's retaliation against Lee, he has suffered and will continue to suffer damages including, pain and suffering, and extreme and severe mental anguish and emotional distress arising from a hostile work environment; losses of monetary compensation vis-à-vis lost bonuses; and injunctive relief to reverse and to prevent noncompliance with its duties under law. Lee is thereby entitled to general and compensatory damages in amounts to be proven at trial.

274. Lee seeks prejudgment interest, post-judgment interest, and costs including reasonable statutory attorneys' fees and expert witness fees.

WHEREFORE, Plaintiff, JAMES LEE, prays for judgment in his favor and against Defendant and that the court award him direct and consequential damages, statutory attorneys' fees, lost wages and benefits, liquidated damages, front pay, punitive damages pursuant to 42 U.S.C. § 1981a(b)(1), prejudgment interest, post-judgment interest, and costs in this action

including reasonable statutory attorneys' fees and expert witness fees, and grant such other relief as the Court may find appropriate.

COUNT XVI
(JAMES LEE: TORT-INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

275. Lee restates and realleges paragraphs one through forty-four (1-44) and one-hundred-nineteen through one-hundred-fifty-one (119-151) as if fully stated herein as paragraph two-hundred-seventy (270).

276. Defendant JEWEL FOOD STORES, by and through its agents, engaged in, instigated, and directed a course of extreme and outrageous conduct with the intention of causing, or reckless disregard of the probability of causing, emotional distress to Plaintiff during Plaintiff's employment with Defendant.

277. The severe emotional distress was caused by, but was not limited to: 1) transferring Lee to an underperforming and failing store; 2) criticizing and reprimanding Lee's performance; 3) building a case for Lee's termination; 4) instituting a campaign of unreasonable and unwarranted discipline against Lee; 5) giving unwarranted, negative performance reviews to Lee; 6) denying Lee bonuses based on earned positive performance review; 7) denying Lee bonuses based on the unwarranted, negative performance reviews; 8) giving Lee unattainable sales goals; 9) giving Lee write-ups for minor flaws and issues that were never before at issue in his career; and 10) failing to train and/or failing to sufficiently train Lee for the single store Director Position.

278. Defendants harmed Plaintiff because those actions caused him to suffer humiliation, embarrassment, mental anguish, and emotional distress. The actions of Defendant by and through its agents injured Plaintiff's mind and body.

279. As a proximate result of the acts alleged herein Plaintiff suffered severe or extreme emotional distress, entitling him to damages in an amount to be proven at trial.

WHEREFORE, Plaintiff Lee requests the following relief from Defendant; damages in an amount to be determined by jury, including pre- and post-judgment interest, and punitive damages, costs and attorney's fees, including expert witness fees, and such other relief as is just and proper.

Respectfully submitted,

**TIMOTHY CESARIO, STEVE
CIESLAK, GREGORY LAROCCO, and
JAMES LEE**

Plaintiffs,

By: /s/ Nicholas F. Esposito

One of Plaintiffs' Attorneys

Nicholas F. Esposito, Atty. # 0755176
Bradley K. Staubus, Atty. # 6230326
Christopher K. Crimer, Atty. # 6319104
Christopher P. Rubey, Atty. # 6324580
ESPOSITO & STAUBUS LLP
7055 Veterans Blvd., Unit B
Burr Ridge, IL 60527
(312) 346-2766

CERTIFICATE OF FILING

Nicholas F. Esposito, an attorney, certifies that I have this day filed the foregoing Complaint with the Clerk of Court using the CM/ECF system in accordance with local rules and the General Order on Electronic Case Filing (ECF).

Respectfully submitted this 17th day of January, 2017.

By: /s/ Nicholas F. Esposito

One of Plaintiffs' Attorneys

Nicholas F. Esposito, Atty. # 0755176
Bradley K. Staubus, Atty. # 6230326
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Christopher P. Rubey, Atty. # 6324580
ESPOSITO & STAUBUS LLP
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