

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Curtis Pronk,

Case No: _____

Plaintiff,

vs.

**COMPLAINT
(JURY DEMAND)**

City of Rochester,

Defendant.

COMES NOW the above named plaintiff, Curtis Pronk, who states and alleges as and for his Complaint as follows:

PRELIMINARY STATEMENT

1. This is an employment discrimination case based upon unlawful age discrimination of plaintiff Curtis Pronk (Plaintiff) arising out of his employment and constructive discharge from defendant City of Rochester (Defendant). Plaintiff was subjected to a hostile work environment, unfair criticisms and mischaracterizations of his performance by Defendant that placed him in an untenable position of imminent demotion and reduction of pay unless he resigned his position and left his job, causing him to be constructively discharged in violation of the Age Discrimination in Employment Act (ADEA). Plaintiff seeks damages, injunctive relief, and all other relief allowed by law.

PARTIES

2. Plaintiff Curtis Pronk (Plaintiff) is a male, age 61, who resides in the city of Rochester, state of Minnesota, County of Olmsted. At material times he was

employed by defendant City of Rochester in its Fire Department administration.

3. Defendant City of Rochester (Defendant), is a municipality in the state of Minnesota, County of Olmsted, and maintains and operates the Rochester Fire Department and employs its fire fighters, administration, and staff who work in the City of Rochester.

JURISDICTION

4. This Court has jurisdiction pursuant to 28 U.S.C. Section 1331, federal question jurisdiction. Plaintiff has asserted a federal claim for discrimination because of his age under the Age Discrimination in Employment Act of 1967, as amended, (ADEA), 29 U.S.C. Section 621, *et seq.* Plaintiff filed a charge of discrimination with the United States Equal Employment Opportunity Commission (EEOC) on or about February 16, 2022, that was cross filed with the Minnesota Department of Human Rights (MDHR). The EEOC issued a Determination and Notice of Rights, including the right to sue, on September 19, 2022. Plaintiff has complied with all administrative requirements.

FACTUAL ALLEGATIONS

5. Plaintiff was employed full-time by Defendant, from February 16, 2006 until August 31, 2021 as the Administrative Services Manager of the Defendant's Fire Department.

6. Plaintiff's job performance reviews in his employment with the Defendant were excellent. His 2015 performance review, by Vance Swisher, Deputy Fire Chief, was excellent. Deputy Chief Swisher noted in the Supervisor's Comments in Plaintiff's review, "Great Meeting, no[t] additional items were discussed, Curt is a great employee and continues to be an asset to the department."

7. Plaintiff did not have long standing or ongoing performance issues and Defendant did not warn or notify him of performance issues. In his performance review of July 18, 2016 by Deputy Chief Swisher, Plaintiff received the highest rating of “Successful Performance.”

8. Plaintiff’s 2018 performance review was conducted by Steven P. Bealeau who gave him top marks. The ratings indicated the Plaintiff completed all of the areas designated as his goals in his 2017 review. The supervisor remarked that “Curt does a fine job in a difficult environment where there are many internal customers with varying degrees of system operation understanding.” Plaintiff attended several New World Conferences on behalf of the Department and Defendant. Plaintiff increased his workload as well. He compiled and completed the National Fire Incident Report System (NFIRS) report that he monitored monthly for the Department and prepared the necessary state reports each month. Plaintiff was complemented for his work with the Defendant and his monthly reports.

9. In 2019, Plaintiff’s performance review was conducted by Eric D. Kerska, the Defendant’s Fire Chief. The review was conducted on February 27, 2019 for the period of February 15, 2017 to February 16, 2019. Plaintiff received the top rating for his overall performance of “Successful Performance.” No specific areas of concern were raised in the Plaintiff’s 2019 performance review and Chief Kerska noted that “Curt excels at building strong relationships with others.” The Defendant’s review policy provided that performance reviews were to be conducted annually from the employee’s anniversary date. Plaintiff was provided no explanation by Defendant why his review

was not conducted the previous year or given a reason for the two-year delay between his performance reviews.

10. Upon information and belief, Plaintiff was the only supervisor whose review was not conducted by Defendant in 2018. Younger supervisors received timely annual performance reviews in the Fire Department. Despite the delay in receiving his review, Plaintiff received top marks for his performance. His supervisor added the following to Plaintiff's 2019 review:

Curt is a valuable member of the team who contributes greatly to this organization. He has a can do attitude and keeps this place functioning. He relies on relationships to get things done through people. I enjoy working with him on complex problems. Curt is now tasked with focusing more as a leader of the fire admin team. I will work with him as needed to help him navigate this change.

11. In 2019 Plaintiff raised needs of the Fire Department for IT technology due to understaffing in IT support. The new Chief, Kerska, however, did not address this further. Plaintiff orchestrated the Fire Department's Coop plan that required and received approval from Ryan Ostreng of the City's Emergency Management unit. While Plaintiff could input changes, they would not be implemented by the Defendant until Mr. Ostreng approved them for implementation.

12. Plaintiff effectively managed the Defendant's Fire Department's budgeting and kept management and staff informed at monthly staff meetings. He presented information and data on amounts of the budget used and amounts available. He prepared and presented monthly reports and fielded questions as necessary from staff under Chief Kerska. Plaintiff also generated a comprehensive annual "bucket report" for the Fire Department and Chief Kerska for presentation to Department heads outlining the Department's budgeting for overtime, staffing, emergency calls, and other functions of

the Fire Department. Chief Kerska utilized Plaintiff's bucket report for his presentations to Defendant's other Department heads and did so because the Plaintiff's reports were accurate and useful for budgeting and planning.

13. Plaintiff was instrumental in keeping the Defendant's construction costs of an 8.8 million dollar fire station on budget and under budget in 2016 – 2017. He researched and utilized available rebates with utilities that saved the Defendant \$50,000 and the project came in under budget. The Defendant's Fire Department's budget was met and expenses were managed properly and efficiently under Plaintiff.

14. After his February 27, 2019 performance review, Plaintiff's next performance review was conducted on December 15, 2020 by Deputy Fire Chief Vance Swisher. No explanation was given by Defendant why Plaintiff's performance the review was not conducted on his anniversary date in February, or the 21 months between his reviews. Plaintiff's overall performance rating was "successful" performance, the highest rating level. In the supervisor's comments, Deputy Chief Swisher noted:

We are evaluating the Fire Administration structure and determining how this team should be supervised and the task assigned. This will include reviewing the Job Description of the Administrative Services Manager and realigning associated task. This will be completed, and the Job Description updated by June 2021.

15. Deputy Chief Swisher began a pattern of critical perceptions of Plaintiff aimed at mis-characterizing Plaintiff to create the image and perception of someone not performing the job duties expected of him. Mr. Swisher expressed age-based animosity to Plaintiff in approximately December, 2020 when he accused Plaintiff of having "bull shitted his way through." Plaintiff sought specific examples of concern from Deputy Chief Swisher, but none were given.

16. Deputy Chief Swisher shifted focus for the Plaintiff to changes in his job

position description. Mr. Swisher demanded explanation as to how Plaintiff would be successful performing certain tasks within his position. Defendant did not require other similarly situated younger managers, including the Administrative Services Manager for the Police Department, to do the same, or to the level of specificity as the Plaintiff.

17. The Defendant engage in a pattern and practice of fostering a perception of criticism of Plaintiff's job performance without identifying specific deficiencies. On July 6, 2021, Deputy Chief Swisher informed Plaintiff that he was working on his (Plaintiff's) 2021 performance review. Mr. Swisher asked Plaintiff to go over his 2020 performance review and document what steps he had taken to improve. Plaintiff responded with a detailed summary on July 9, 2021, articulating steps and actions taken by him as best as possible. Mr. Swisher set out "issues" that dealt with "perceptions" of Plaintiff's performance without stating tangible actions, measures for evaluating performance of tasks, or identifying work product as points of concern. Plaintiff requested examples of Deputy Chief Swisher's accusation that Plaintiff was "bluffing" or "making up answers," but received no response. The perceptions mentioned by Mr. Swisher were vague and unverified generalizations, making addressing specific functions difficult, if not impossible, for Plaintiff. Younger employees of the Defendant, and in the Fire Department, were not rated in their performance based upon un-defined perceptions instead of actual goals and outcomes for their positions. Defendant unfairly based the Plaintiff's performance in vague and undetermined perceptions because of his age.

18. Plaintiff was invited to a meeting on July 20, 2021 to discuss his performance by Deputy Chief Swisher. The invitation and calendar indicated the meeting would be with Mr. Swisher alone. Deputy Chief Swisher told Plaintiff that it

would just be the two of them attending the meeting. Instead of meeting just with his direct supervisor, Mr. Swisher, however, Plaintiff was surrounded by Jennifer Simpson of the Defendant's Human Resources Department, Fire Chief Kerska, and Deputy Chief Swisher. Defendant attempted to intimidate Plaintiff at the meeting by intentionally deviating from the Defendant's standard practice for conducting performance reviews by the immediate supervisor. The meeting resembled a termination meeting. Plaintiff was informed at the meeting by Chief Kerska that his job would be looked at and that his pay would be reduced. Plaintiff's job duties would be changed, but no specifics were presented. Plaintiff was instructed to review the position description on the spot while the other three watched closely in an intimidating manner. Plaintiff was told to make recommendations about what he could perform and what he could not do to conform his duties – by July 27, 2021. If this input was genuinely sought from Plaintiff, it could have been obtained prior to changing his job and determining his pay would be reduced. The decision to reduce his pay – and alter his job duties – had been made by Defendant before the meeting and before Plaintiff's input was sought.

19. Plaintiff's supervisory duties were removed by Defendant without explanation. Deputy Chief Swisher informed the Plaintiff that he would no longer be supervising the two administrative assistants he had supervised. The Deputy Chief said that he was going to "take the girls back," and that Plaintiff would no longer supervise anyone.

20. Earlier on June 15, 2021, the Defendant declared in an email from Linda Hillebrand, Director of Human Resources, to Steven Cook at the union, that Plaintiff's position of Administrative Service Manager was moving from Rochester Supervisory

Association (RSA) to Rochester Professional Employees Association (RPEA), and the position was no longer a supervisor position. Ms. Hillenbrand advised Mr. Cook and Dan Plizga of the union: “one more change – the Administrative Service Manager/Fire (Curt Pronk) is moving from RSA to RPEA effective 6/09/21 as the position is no longer a supervisor. This position is in Grade 6, 710 workpoints....” This change was made unilaterally by the Defendant. The position was in Grade 6, 710 work points. The grade level chart reflected the level of points and commensurate level of compensation. This change in Plaintiff’s pay and grade level occurred without input from Plaintiff or, upon information and belief, the union. The change in Plaintiff’s pay grade and job classification level also occurred before Plaintiff’s performance review in July or solicitation of his input for the position allegedly requested by Deputy Chief Swisher. The change of Plaintiff’s position classification – and reduction in pay – had already been made in June as reflected by Human Resources Director Hillenbrand’s email, and was done so because of Plaintiff’s age.

21. On July 23, 2021, Mr. Cook of the union forwarded Ms. Hillebrand’s email about the job re-classification to Plaintiff.

22. Plaintiff contacted his union for assistance in upholding his rights and pay at grade level six. The reduction of his pay to grade level four from grade level six was significant in reducing his pay. At grade level six Plaintiff’s annual salary was \$134,923. At grade level four, his pay was reduced to \$116,213. Upon information and belief, the re-classification of Plaintiff’s position by Defendant did not follow the necessary vetting and analysis required with input from the union and the Defendant and steps for reclassification. The unusual unilateral change for Plaintiff’s job classification level and

reduction in pay by Defendant was raised by Steve Cook of the union to Ms. Hillenbrand of July 29, 2021 in which he observed:

“Based on past experience it seems to take 6+ months for a new job description to go through the full process including points assigned by the Cities (sic) consultant.”

Instead of months, the changes for Plaintiff’s position and reduction in pay took, at most, a few weeks and was done without a new job description in place. The Defendant made the unilateral changes for Plaintiff’s job duties and reduction of pay to gain leverage to create an untenable and intolerable situation and force him to quit because of his age. Defendant was aware of such protocols but purposefully did not follow them for Plaintiff’s situation. Upon information and belief, Defendant did not disregard the standard vetting procedures and processes for pay grade and salary level with the union for younger employees of the Defendant and its Fire Department.

23. The Collective Bargaining Agreements in place covering the Plaintiff’s position provided in section 3.03 Governing Reclassifications that “All requests for reclassification will be reviewed in accordance with the approved policy on reclassification in effect at the time of the execution of this Agreement.” This requirement was not followed for Plaintiff because of his age.

24. The expedited changes for Plaintiff’s job position and reduction in pay deprived him of incentives for notifying the Defendant of retirement. In the Defendant’s Organizational policy, employees are eligible for a \$1,500 incentive bonus for providing 180 days’ notice of retirement and a \$1,000 bonus for providing 120 days’ advance notice of retirement. The Defendant’s human resources director – and the department – were aware of these opportunities when they acted in Plaintiff’s situation.

25. Defendant engaged in subterfuge with Plaintiff by continuing to solicit input from him in late July, 2021 about the new job description. Plaintiff had not been informed by Ms. Hillenbrand about re-classifying his job position and pay grade structure in June, 2021. Despite having determined in June, 2021 that the changes would be made, Plaintiff was asked for input for a vague position description by Deputy Chief Swisher and human resources. The request for input from Plaintiff was fruitless because the change had already been made by the Defendant.

26. Plaintiff provided feedback to Defendant regarding his new job position that would not be considered satisfactory by the Defendant. On July 26, 2021 Plaintiff sent Jennifer Simpson in Defendant's human resources department an email setting forth numerous suggestions for the new position. Plaintiff sent Ms. Simpson another email on July 27, 2021 apprising her that he wanted more time to provide comments for a revised job description and review it with Deputy Chief Vance Swisher who was out of town. Ms. Simpson responded that Plaintiff had not been instructed to write a job description but to "provide input." She informed Plaintiff that because he had not responded prior to noon on July 27th, the Defendant City had "moved on." The Plaintiff, however, had responded timely on July 26, 2021. Ms. Simpson's response and the Defendant's approach showed the Defendant did not genuinely want input from the Plaintiff and that it had decided to force him out of his employment because of his age.

27. Plaintiff indicated to Defendant that he could be successful in his position with minimum changes. In response, Mr. Swisher stated in an email to the Plaintiff of July 26, 2021, "I am sorry to be blunt, but you have not been successful previously and I don't think you would be successful moving forward with the amount of scrutiny that we

are placing on all positions to maximize the efficiency and effectiveness of our current resources.” This statement by Mr. Swisher was not true. Mr. Swisher asked Plaintiff to include what changes he planned to implement that would make him successful under each bullet point of the job description as well as examples of how he would be successful overseeing the equipment revolving account and purchasing apparatus and examples of how he saw his role in department technology. These requests by Mr. Swisher identified no particular deficiencies of Plaintiff in the areas indicated, but asked for his description of how he would succeed moving forward. Plaintiff provided responses. The requests for this information by Mr. Swisher were aimed at finding problems with Plaintiff’s responses.

28. Plaintiff was not provided ongoing notice of warnings or concerns regarding performance deficiencies by Defendant. He was not provided documentation of performance problems. Individuals who allegedly had issues with Plaintiff’s style of management did not approach him with performance issues and none were brought to his attention by the Chief or Deputy Chief.

29. Irrespective of Plaintiff’s disagreement with Mr. Swisher’s conclusion that he did not think Plaintiff would be successful moving forward, the statement was not based on Plaintiff’s prior performance that had been excellent. Instead, Mr. Swisher’s comments were based on his stereotype of Plaintiff’s age and pre-conceived perception that Plaintiff would not be successful – regardless of his performance. Mr. Swisher stated that he had “other plans” for Plaintiff that did not include him remaining in his position. This statement by Mr. Swisher did not afford Plaintiff the opportunity for improvement through a performance improvement plan, or similar steps, in order to

correct or improve any real deficiencies, like were afforded to younger employees. Mr. Swisher indicated by his actions and statements that he would not be allowing Plaintiff to succeed.

30. Plaintiff provided Deputy Chief Swisher with a detailed email regarding his job duties later the same day, July 26, 2021, that addressed the specifics of each bullet point in the position description. Plaintiff sent the info to Deputy Chief Swisher who responded by email on July 27, 2021, stating “That should work.” Plaintiff’s effort and response had little change to the Defendant. The Defendant’s suggestion that Plaintiff was not responsive was incorrect.

31. On July 29, 2021 Plaintiff sent Ms. Simpson an email requesting a complete copy of his employment materials maintained by the Defendant. Ms. Simpson responded “Sure we will get your personnel record prepared and be in contact with you when available.” The Defendant, however, never provided Plaintiff with a copy of his employment records he requested. His personnel records have not been provided to him. The Defendant’s failure to provide the file materials to Plaintiff is contrary to Minn. Stat. Sec. 181.961 that affords employees the right to review and obtain a copy of their personnel record. Plaintiff desired to review any documented performance warnings or criticisms, but none were provided.

32. The union contacted Ms. Hillebrand about Plaintiff’s situation. The Defendant indicated to the union that if Plaintiff resigned from the Fire Department that he could retain his level six pay grade for the balance of August, 2021. His respective vacation and sick leave payouts would therefore be based on grade level six pay. The alternative was to file a formal grievance of the reduction in pay to level four and dispute

the change of pay grade level and position with no certainty of returning to grade level six or job responsibilities under the supervision of Deputy Chief Swisher. The options presented to Plaintiff with little time to decide were intended to create an untenable and intolerable situation to coerce him to leave his employment with the Defendant, and did create an untenable and intolerable employment situation for the Plaintiff because of his age.

33. The Defendant presented Plaintiff with a position summary for Administrative Services Specialist dated July 27, 2021 attached to the memo of August 9, 2021 explaining the new job position.

34. On August 9, 2021 the Defendant's Human Resources Director, Ms. Hillebrand, presented Plaintiff with a document entitled "Job Description Revisions and Performance Expectations." This document purported to set out new job duties of Plaintiff although he had already been informed of a job change and reduction in rate of pay. Ms. Hillenbrand described the document as a "memo" that stated, in part, "this memo provides expectations for the broad essential duties listed in your job description, it is not intended to replace the job description, which outlines all responsibilities in your position that you are accountable for successfully performing." These additional duties were to be imposed along with an upcoming reduction in Plaintiff's pay grade level and amount of pay. Upon information and belief, Defendant made no similar changes imposing additional job duties, with reduced pay and grade level, to the same position in the Defendant's Police Department or to younger employees in other Departments of the Defendant.

35. Plaintiff was sixty years old when these changes in his duties and pay

were constructed by the Defendant. He planned to continue working for the Defendant to standard retirement age in his sixties. He did not plan to retire at age sixty. He would have become Medicare eligible at age sixty-five. The Defendant was aware of his age and circumstances in changing his job duties and responsibilities, and the planned reduction in pay, at all times, in 2021.

36. Upon information and belief, no younger employees in the Defendant's Fire Department had their job duties changed and pay reduced unilaterally in the same manner as the Plaintiff. His job change and pay reduction was not a consequence of a structural overhaul or changes in the Defendant's Fire Department's administrative functions and pay structure, or Plaintiff's genuine performance. Instead, the changes were implemented specifically for Plaintiff who was 60-years old to make his working conditions so intolerable and untenable to force him to leave his employment with the Defendant.

37. Plaintiff was an experienced administrator with Defendant with no history of performance problems or warnings. During the last eight months of his employment Plaintiff was subjected to ongoing changes in job duties, assignments, and interactions, coupled with unrealistic expectations by Defendant, and vague allegations about unspecified areas needing improvement with no specific means of measuring improvement.

38. Plaintiff was presented with an untenable choice of taking early retirement by August 31, 2021 or having his pay reduced, job duties increased without specifics, and subject to increased scrutiny. Because his pay would be reduced significantly by the

Defendant to grade level four, and to mitigate his damages, coupled with increased job duties, and undefined expectations, Plaintiff retired effective the end of August, 2021.

39. Plaintiff was not given notice of genuine performance deficiencies. Nor was he afforded true opportunity to correct any actual deficiencies affecting his performance. He was put in an untenable and intolerable position of enduring a significant reduction in pay, change in job position, increase in duties for less pay, and unspecified additional duties and performance expectations by the Defendant because of his age.

40. Plaintiff's office was located four offices from Chief Kerska's at the Fire Department. Deputy Chief Swisher's office was next to Plaintiff's office. At times, Chief Kerska would walk down the hall to Plaintiff's office and say "Hey Richard" and call him "Richard" loud enough for other employees and staff to hear. Plaintiff's first name was not "Richard," but Curtis or Curt. Chief Kerska used the name Richard as an insulting substitute for calling Plaintiff "Dick," or a "Dick," slang for penis, to humiliate and embarrass Plaintiff in the workplace in front of others. Instead of treating Plaintiff as a professional and using his given name, Chief Kerska displayed his power over Plaintiff and age-based animosity by calling him "Richard" so that he, and everyone else, knew he was calling him a Dick. The Chief repeatedly singled out the Plaintiff in this manner in the workplace for ridicule and humiliation while not making insulting and offensive comments to younger employees and staff in the work environment. Chief Kerska's disrespectful treatment and derogatory name-calling of Plaintiff towards him was because of his age. Chief Kerska continued referring to and addressing Plaintiff as "Richard" until his employment ended in August of 2021.

41. Deputy Chief Swisher and others at the City saw Chief Kerska's denigrating treatment of Plaintiff in the workplace, and condoned the offensive comments and followed his example for offensive treatment of Plaintiff in the workplace because of his age.

42. Plaintiff was constructively discharged by the Defendant because of his age. He was presented with untenable and intolerable conditions by Defendant such that he resigned in lieu of enduring a significant reduction in pay, unspecified change in job position, duties, increase of duties, with unclear and unstated expectations in order to safeguard receipt of higher payout of benefits at retirement. Plaintiff also escaped the hostile work environment.

43. Defendant acted willfully toward Plaintiff in discriminating against him because of his age and he is entitled to liquidated damages under the ADEA.

44. Defendant City is vicariously liable for the acts and omissions of its employees described herein.

JURY DEMAND

45. Plaintiff hereby demands a trial by jury on any issues triable as a matter of right.

CAUSES OF ACTION

COUNT I – VIOLATION OF AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA) – 29 U.S.C. SEC. 621 *et seq.*

46. Plaintiff realleges paragraphs 1 through 45 and incorporates them herein. Defendant's conduct towards plaintiff described above violated the Age Discrimination in Employment Act of 1967, as amended (ADEA), 29 U.S.C. Sec. 623(a)(1) and (2), by wrongfully discriminating against Plaintiff in his employment because of his age in the

terms, conditions, compensation, and privileges of employment, denial of opportunities, and subjecting him to a hostile and abusive work environment, and constructively discharging him because of his age. As a result, Plaintiff was injured and sustained damages including lost income, past and future, lost benefits, past and future, and other damages in excess of \$75,000.00.

47. Plaintiff realleges paragraphs 1 through 46 and incorporates them herein. By the above-described conduct, Defendant acted willfully toward plaintiff in discriminating against him because of his age and he is entitled to liquidated damages as allowed by law under the ADEA, 29 U.S.C. Sec. 626 (b).

WHEREFORE, Plaintiff prays for Judgment against Defendant as follows:

1. Damages in excess of \$75,000.00 under Count I.
2. Damages including lost income, employment benefits, or other compensation, past and future, denied to Plaintiff by reason of the violations under Count I.
3. Liquidated damages as allowed by law under Count I.
4. Injunctive and equitable relief the court deems appropriate, including front pay, as allowed under Count I.
5. Pre-judgment and judgment interest on all amounts awarded.
6. All damages and relief as available by law.
7. Attorney's fees, costs, and disbursements as available under the ADEA.
8. For such other and further relief as the court deems just and equitable.

STEPHEN C. FIEBIGER LAW OFFICE, CHARTERED

Dated: December 14, 2022

s/Stephen C. Fiebiger
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Stephenfieblaw@gmail.com

ATTORNEY FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Curtis Pronk

(b) County of Residence of First Listed Plaintiff Olmsted
(EXCEPT IN U.S. PLAINTIFF CASES)

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

Stephen C. Fiebigler, 3000 West County Road 42, Suite
310, Burnsville, MN 55337 (952) 746-5171

DEFENDANTS

City of Rochester

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Age Discrimination in Employment Act (ADEA), 29 U.S.C. Sec. 621, et seq.
Brief description of cause:
Age discrimination case involving hostile work environment and constructive discharge because of age.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ 75,000 over
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

December 14, 2022

SIGNATURE OF ATTORNEY OF RECORD

Stephen C. Fiebigler

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