

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROBERT GRIMES,

Plaintiff,

– against –

**WORLDWIDE SPORT NUTRITIONAL
SUPPLEMENTS 1440 FOODS, STEPHEN SISTI,
ANTHONY DONAHUE, and JOHN DOE, *in their
individual and professional capacities.***

Defendants.

Case No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Robert Grimes, by his attorneys, Filippatos PLLC, hereby alleges against Worldwide Sport Nutritional Supplements 1440 Foods (“1440 Foods” or the “Company”), Stephen Sisti (“Mr. Sisti”) and Anthony Donahue (“Mr. Donahue”) (“collectively “Individual Defendants”), and John Doe (collectively “Defendants”) as follows:

NATURE OF THE CASE

1. Plaintiff Robert Grimes brings this action to seek redress against his former employer, Defendants 1440 Foods, Stephen Sisti, Anthony Donahue, and John Doe for violating the Stored Communications Act, 18 U.S.C. § 2701 (“SCA”) and for unlawfully discriminating against him on the basis of his age (44 years) and subsequently retaliating against him in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 *et seq.* (“ADEA”); the New York State Human Rights Law, New York State Executive Law, §§ 296 *et seq.* (“NYSHRL”); and the New York City Human Rights Law, Administrative Code §§ 8-107, *et seq.* (“NYCHRL”). Despite Mr. Grimes’s stellar performance in his role as a Director of Customer Development at 1440 Foods, surpassing all of his sales goals, Mr. Grimes’s supervisors – Stephen Sisti and Anthony

Donohue – discriminated against him by giving him an unwarranted negative performance review rife with age-based discriminatory comments after Mr. Grimes declined a leadership position – a role with increased responsibility and no increase in compensation – on Mr. Donohue’s team. Upon inquiring why he was given a negative performance review, Mr. Grimes learned that Mr. Donohue was unhappy about Mr. Grimes declining his offer of the leadership role on his team and Mr. Sisti wrote the review based only on a “general feeling” he had, but did not have any specific reasons for the negative performance review. It had become clear that 1440 Foods had manufactured a pretextual basis to retaliate against Mr. Grimes on the basis of his age and his rejection of Mr. Donohue’s offer to work on his leadership team. However, Mr. Grimes was consistently reassured he would not be terminated. Nonetheless, shortly thereafter, Mr. Grimes was abruptly terminated without reason.

2. As a result of Defendants’ unlawful conduct, Mr. Grimes brings this action against his former employer, 1440 Foods, Mr. Sisti, Mr. Donahue and John Doe for discrimination, harassment (hostile work environment) and retaliation on the basis of his age.

JURISDICTION AND VENUE

3. Jurisdiction of this Court is proper under 28 U.S.C. §1331 as Plaintiff alleges claims pursuant to the SCA and ADEA.

4. The Court has supplemental jurisdiction over the claims Plaintiff has brought under state and city law pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) as one or more of the Defendants reside within the Southern District of New York and/or the acts complained of occurred and/or originated therein.

ADMINISTRATIVE REQUIREMENTS

6. Plaintiff filed a timely charge of discrimination with the Equal Employment

Opportunity Commission (“EEOC”) on February 2, 2025, and received a Notice of Right to Sue (“NORTs”) as of February 18, 2025.

7. Plaintiff has met all other prerequisites or administrative requirements necessary to bring forth his claims in this action.

PARTIES

8. At all times relevant hereto, Plaintiff was and is a resident of the State of Arkansas and the County of Washington.

9. At all times relevant hereto, 1440 Foods was and is a domestic for-profit company maintaining its principal place of business at 500 7th Avenue, New York, New York 10018.

10. At all times relevant hereto, Plaintiff was an employee at 1440 Foods with significant contacts with the Company’s New York Headquarters.

11. At all times relevant hereto, Defendant Sisti was Plaintiff’s supervisor and/or had supervisory authority over him. Defendant Sisti had the authority to hire, terminate, and/or affect the terms and conditions of Plaintiff’s employment, or to otherwise influence the decisionmaker of the same. Defendant Sisti had significant contacts with the Company’s New York Headquarters.

12. At all times relevant hereto, Defendant Donahue was Plaintiff’s supervisor and/or had supervisory authority over him. Defendant Donahue had the authority to hire, terminate, and/or affect the terms and conditions of Plaintiff’s employment, or to otherwise influence the decisionmaker of the same. Defendant Donahue worked primarily out of the Company’s New York Headquarters.

13. At all times relevant hereto, upon information and belief, Defendant John Doe is/was an employee, agent, and/or representative of 1440 Foods.

14. At all times relevant hereto, Defendant Sisti, and Defendant Donahue were employees of 1440 Foods (the “Individual Defendants”).

FACTUAL ALLEGATIONS

I. Mr. Grimes's Stellar Career in Sales

15. Mr. Grimes is a highly skilled and experienced Director of Customer Development with 16 years of experience in various Consumer Packaged Goods sales and support roles.

16. After graduating with a Bachelor of Science in Mechanical Engineering from Louisiana Tech University and a Master of Business Administration from the University of Arkansas, Mr. Grimes embarked on a prosperous career as a strategic sales leader, demonstrating remarkable success in national account leadership within the mass, club, value, grocery, and convenience channels.

17. Furthermore, during the course of his career, Mr. Grimes has successfully represented such venerable brands as Pfizer Consumer Health Care, Abbott Nutrition, and Coca-Cola.

18. More recently, Mr. Grimes was a National Business Manager at Henkel Corporation ("Henkel"), where he cultivated Joint Business Planning ("JBP") partnerships with multiple buyers (laundry, dish, samsclub.com, Sam's Club Puerto Rico, and Truckload) for national and generic brands at Sam's Club.

19. In this role, Mr. Grimes managed the trade budget, developed an annual pricing/promotional plan, and guided forecast and communication strategies.

20. By the end of his tenure at Henkel, Mr. Grimes had grown the business by +16.7%, up to \$291M in total annual gross shipments.

21. Accordingly, in 2019, Mr. Grimes was recognized with a Growth Driver sales award and named a Global Sales Academy graduate at Henkel.

II. Mr. Grimes Joins 1440 Foods and Excels in His New Role

22. On September 14, 2020, Mr. Grimes was hired as a Director of Customer Development at The Bountiful Company by Shannon Cox (age 53), Vice President of the Walmart and Sam’s Club account teams. After the brands on which he worked were acquired by 4x4 Capital Foods, 1440 Foods was created and became Mr. Grimes’s employer.

23. Mr. Grimes’s starting annual salary at the Company in 2020 was \$180,000.

24. Mr. Grimes’s responsibilities included managing the \$45M business of branded and private label vitamins, supplements, and performance nutrition at Sam’s Club; overseeing the Sam’s Club account trade budget and sales forecast; selling new items; upsizing Stock Keeping Units (“SKUs”), and updating pricing, all with an eye to new revenue growth.

25. In his first year with the Company, Mr. Grimes showcased his expertise and played a pivotal role in helping 1440 Foods grow tremendously.

26. At the end of FY2021, Mr. Grimes received an outstanding Performance Review (3 out of 4) for growing the Sam’s Club account +36.8% versus FY2020.

27. In FY2022, Mr. Grimes’s account list expanded to include Dollar General, HEB, Meijer and BJ’s Wholesale Club.

28. In FY2022, despite 1440 Foods facing challenges in supplying an adequate inventory of the Pure Protein Strawberry RTD 15ct (“Pure Protein RTD”) to retail outlets—a responsibility attributed to the supply chain organization of 1440 Foods—Mr. Grimes played a pivotal role in the sell-in of the Pure Protein RTD into the market. Notably, the Pure Protein RTD in stores did remarkably well, underscoring the effectiveness of Mr. Grimes’s strategies in promoting the product line and Mr. Grimes doubled the Pure Protein brand distribution at Sam’s Club. Mr. Grimes was also successful in upsizing the primary SKU (Pure Protein Bars Variety Pack) from a 21 count to a 23 count, all while negotiating three price increases within the fiscal year, as was requested by

corporate leadership.

29. Mr. Grimes also had some early wins on his new accounts in FY2022: at BJ's Wholesale Club, he was able to secure new distribution of the exclusive Body Fortress 3lb Isolate Powder SKU (Chocolate and Vanilla SKU's), and BJ's business grew by 74% in FY2022 because of the new business that Mr. Grimes brought to the Company.

30. By the end of FY2022, Lou Salvatore (age 57), Senior Director of Customer Development rated Mr. Grimes's performance a 3 out of 4 (i.e., exceeds expectations) and praised him for his superior business acumen and sales efforts.

31. In FY2022, Mr. Grimes's gross shipments exceeded the set sales target by +32.2%.

32. In FY2023, Mr. Grimes's sales exceeded his set sales target by +26.7% and his gross profit totals exceeded his target by +35.1%.

33. In fact, Mr. Grimes's efforts accounted for 72% of 1440 Foods' entire gross profit growth (versus budget) in FY2023.

34. In his time at 1440 Foods, Mr. Grimes nearly tripled the size of Sam's Club business, and he set up an account for continued success with strong baseline growth across the portfolio.

35. As aforementioned, Mr. Grimes also successfully negotiated three cost increases in FY2022, which also led to a baseline unit velocity growth of +34% (over the previous year) because of his pricing strategy to deal with cost increases.

36. Furthermore, Mr. Grimes significantly improved 1440 Foods' Value channel business in FY2023.

37. He successfully renegotiated a fee structure for the Company's Dollar General business that turned an unprofitable business around to become profitable.

38. This newly agreed fee schedule saved the Company from having to exit the Dollar

General account.

39. Mr. Grimes also added an estimated \$1.2M of incremental new business when Pure Protein was sold into Family Dollar for the first time.

40. When he was terminated, Mr. Grimes's salary was \$192,168.

41. Notably, during his employment at the Company, Mr. Grimes worked from the Arkansas office but often visited the New York Headquarters to attend sales meetings, broker top to-top meetings, prepare for projects, as well as meet with employees there.

42. Mr. Grimes predominantly collaborated with the employees in the New York office and was in constant contact with them.

43. Because Mr. Grimes had sustained interactions and built strong collegial relationships within the New York office, loved his job at the Company, and since his wife had previously lived in New York, he was open to working outside of the Arkansas office, especially in the New York HQ office.

44. Such facts warrant application of state and local anti-discrimination/anti-retaliation statutes. See, e.g., *Shaughnessy v. Scotiabank*, No. 22 Civ. 10870 (LAP), 2024 U.S. Dist. LEXIS 57840, at *19 (S.D.N.Y. Mar. 29, 2024) (finding that “looking only to where the plaintiff was located just before he was terminated . . . could create a major loophole in the statutory protection that the [New York] Court of Appeals envisaged for employees residing out-of-state but working in New York”) (citing to *Wexelberg v. Project Brokers LLC*, No. 13 Civ. 7904 (LAK)(MHD), 2014 U.S. Dist. LEXIS 84400, at *10 (S.D.N.Y. Apr. 28, 2014)) (quotations omitted). Moreover, *Syeed v Bloomberg L.P.*, No. 41 N.Y. 35 446, 2024 N.Y. LEXIS 293, at *13-14 (N.Y. Mar. 14, 2024) held that both the NYCHRL and NYSHRL protect nonresidents who are not yet employed in the city or state.

45. Thus, the NYSHRL and NYCHRL will apply to Mr. Grimes's case notwithstanding

any geographical restrictions contained in those statutes.

III. Stephen Sisti Joins the Company as Senior Director of Sales in May 2023

46. Mr. Grimes's assimilation at the Company during the first two and a half years went relatively smoothly; however, things began to drastically change for the worse when Stephen Sisti (approximately age 38) joined the Company as Senior Director Customer Development (Grocery Channel) in May 2023.

47. Soon thereafter, the Company inexplicably removed Mr. Grimes from Sam's Club and BJ's accounts – with which he had built strong connections over the past few years.

48. Consequently, Mr. Grimes had to rebuild his customer relationships from scratch and his new customers included several grocery and wholesaler accounts: Hy-Vee, C&S Wholesalers, Ahold, amongst others.

49. Concurrently, Mr. Sisti was assigned to be Mr. Grimes's supervisor.

50. Although, there was no sound business rationale for transferring Mr. Grimes away from the strong relationships he had built with the Sam's Club and BJ's accounts to the grocery retail store accounts, where he had no established connections, Mr. Grimes – being an outstanding team player – accepted the task of handling these grocery retail store accounts without any resistance.

51. Soon enough, however, Mr. Grimes realized that he was being set up to fail because of this unfair reorganization, which substantially diminished the profitability of his customer base, as well as his overall responsibilities.

52. Nevertheless, during this time, Mr. Grimes tried to build a rapport with Mr. Sisti, hoping to make Mr. Sisti feel welcome at the Company.

53. To Mr. Grimes's dismay, however, Mr. Sisti responded coldly and declined any opportunity to get to know Mr. Grimes.

54. This incident set the tone for the rest of their professional relationship at the Company, with Mr. Sisti clearly signaling to Mr. Grimes that he did not intend to build a friendly work relationship with him the way his predecessors, Messrs.

55. Salvatore and Cox – both in their 50s – had by consistently communicating one-on-one with Mr. Grimes regarding his work.

56. While Mr. Grimes had hoped to build a similar working relationship with Mr. Sisti, it was not to be – Mr. Sisti rarely contacted Mr. Grimes to discuss work, often ignored Mr. Grimes’s input, and consistently diminished Mr. Grimes’s contributions.

57. In short, with Mr. Sisti as his manager, Mr. Grimes felt belittled and doomed because of his age.

IV. Anthony Donahue Displays Discriminatory Behavior Towards Mr. Grimes as the Company Exhibits a Concerning Trend of Hiring Younger Employees

58. In March 2023 – shortly before Mr. Sisti joined the Company – Anthony Donahue (approximately 38) replaced Mark Alfieri (approximately 41) as Head of Sales.

59. Soon after he was hired, Mr. Donahue suggested to Mr. Grimes that Mr. Grimes interview for a role on Mr. Donahue’s leadership team, where Mr. Grimes would oversee the Company’s Club and Drug channel, in addition to his previous responsibilities.

60. Upon realizing that the role was not an opportunity for him to increase his salary, nor a promotion from his current role, Mr. Grimes politely declined to interview for the job.

61. Frustrated by Mr. Grimes’s decision, Mr. Donahue forcefully conveyed to Mr. Grimes that his refusal to interview for the position demonstrated a lack of “effort to grow” at the Company.

62. Mr. Donahue’s ageist comments were rendered even more troubling by the Company’s overall trend of hiring younger people in their 20s or 30s to replace employees in their

40s and 50s (like Mr. Grimes, who is 44).

63. The Company's bias against older age groups in their recruitment practices is proven by the demographic makeup of its fifteen-person sales team, where most of the employees are in their 20s and 30s.

64. Indeed, in Mr. Grimes's grocery sales team, there were two other people in their 30s: Derek Acorn, Director of Customer Development, (approximately age 35) and Tyler Vaughters, National Account Manager, (approximately age 34). (Only the other employees, Don Ernst and Julie Crow, that came from The Bountiful Company acquisition – like Mr. Grimes – were older.) While Mr. Ernst and Ms. Crow remain employed at 1440 Foods, they were both under consideration for layoffs shortly after 4x4 Capital's acquisition of 1440 Foods' brands in 2021.

65. Tellingly, last year another employee named Teresa Hartle (approximately age 60) was terminated allegedly to meet "cost cutting" objectives.

66. This year, in May 2024, Azania Andrews, Chief Executive Officer (approximately age 46) was terminated.

67. Furthermore, Mr. Grimes's Walmart and Target team consists of much younger members: Jason Kuilan, Director of Customer Development (approximately age 31), and Lawrence Nastelon, Director of Customer Development for Amazon, (approximately age 33).

68. Clearly, based on the recitation of facts *supra*, the Company has exhibited an ingrained discriminatory pattern or practice of hiring and retaining younger employees (in their 20s and 30s) over older employees in their 40s, 50s, or 60s, which obviously deprives older employees of equal opportunity in the workplace.

V. Mr. Sisti Discriminates Against Based on Age by Giving Him an Excessively Negative Performance Review Without Basis and Despite Mr. Grimes's Outstanding Work Performance

69. Despite rarely interacting with Mr. Grimes during the time they had worked together, on November 16, 2023, Mr. Sisti gave Mr. Grimes the lowest performance evaluation Mr. Grimes had ever received in his career.

70. In this Performance Review for fiscal year 2023 ("FY2023 Review"), Mr. Sisti rated Mr. Grimes 1 out of 4 (needs improvement) – a rating that was completely unwarranted based on Mr. Grimes's impressive work performance that year.

71. Remarkably, in FY2023, Mr. Grimes had significantly overachieved his goals by shattering the gross profit target of \$8.6M and achieving \$11.77M.

72. Further, Mr. Grimes restored the Value Channel business at the Company, negating the required exit of the Dollar General business and adding new business at Family Dollar.

73. Mr. Grimes also sold 13 new items across all of his customers, compared to the initial goal of three for the year.

74. Indeed, Mr. Grimes had overachieved in all three of his annual goals.

75. Additionally, not only had Mr. Sisti only been at the Company for six months when he gave Mr. Grimes the poor FY2023 Review, he had very few interactions with Mr. Grimes and could not have fairly judged Mr. Grimes's work performance for the year.

76. Indeed, upon reading the FY2023 Review, Mr. Grimes was shocked to see that it was rife with Mr. Sisti's subjective observation and statements that clearly insinuated age-based discrimination.

77. Rather than highlighting Mr. Grimes's remarkable achievements in 2023, Mr. Sisti's 2023 Review predominantly centered on Mr. Grimes's attitude and behavior, which Mr. Sisti portrayed in an unfairly negative light.

78. Notably, Mr. Sisti – who was markedly younger than Mr. Grimes – made numerous discriminatory observations focusing on Mr. Grimes’s advanced age.

79. For example, Mr. Sisti made the following statements containing strong undercurrents of age bias:

(1) “*there is little to no willingness to try new things, think differently about the business, or stretch for success...*”

80. This statement is false.

81. Throughout his tenure at the Company, Mr. Grimes has demonstrated initiative and drive to try new things including taking on the grocery store accounts despite having no previous experience with these customers.

82. Not once did he push back on his new responsibility despite the fact that his well-established clients were taken away from him.

83. Instead, Mr. Grimes was willing to try new things, think differently about his clients and tailor his services to their needs.

84. Thus, Mr. Sisti portrays Mr. Grimes as someone who is resistant to change or novel ideas, and that Mr. Grimes is set in his ways and is unwilling to adapt.

85. On the contrary, Mr. Grimes always tried to listen to feedback, and he had the motivation to build a strong rapport with Mr. Sisti since he worked closely with him.

(2) “*the areas of opportunity are heavily influenced by a lack of effort and attitude, vs. a gap in skills.*”

86. This statement is patently untrue.

87. Mr. Grimes was a hardworking employee who went above and beyond to ensure he completed his work with diligence.

88. For example, when the Company asked Mr. Grimes to further develop the

relationship with one of the merchant teams at HEB – a task already made difficult by the standoffish protein powder buyer at HEB – and Mr. Sisti asked Mr. Grimes to create a highly detailed presentation, Mr. Grimes adjusted the presentation numerous times based on the detailed feedback from Mr. Sisti and got the job done.

89. Contrary to Mr. Sisti’s thoughtless and targeted statement, Mr. Grimes invested a significant amount of effort into his work.

90. The obvious falsity of this statement strongly suggests a stereotype that older workers lack motivation and willingness to learn new approaches or to change how they think or work.

91. As aforementioned, Mr. Sisti rarely had the opportunity to speak to Mr. Grimes or observe his alleged “lack of effort and attitude.”

92. Accordingly, Mr. Sisti’s observation about Mr. Grimes is unsubstantiated and very likely pretextual, discriminatory, and retaliatory.

(3) *"Bo aggressively talks over people, interrupting often, with an abrasive style that is not collaborative."*

93. There is no veracity to this statement because Mr. Grimes neither speaks aggressively nor abrasively.

94. Many of the stakeholders he has worked with have expressed positive feedback and emphasized Mr. Grimes’s collaborative and collegial spirit.

95. Once again, Mr. Sisti is portraying Mr. Grimes as someone who is difficult to get along with, yet when Mr. Grimes asked for specific examples about when he “aggressively talks over people,” “interrupt[s] often,” or speaks in an “abrasive style,” Mr. Sisti failed to cite a specific instance.

96. Mr. Sisti simply remarked that Mr. Grimes frequently came across as “too direct,”

a characteristic often associated with the older generation.

97. In discriminatory or retaliatory termination cases, “soft” opinion-based reasons for termination most often belie unlawful animus.

(4) "Bo has a strong point of view on topics I have suggested that we try some things differently"

98. On numerous occasions, as mentioned *supra*, Mr. Sisti has stated that Mr. Grimes has a “different style” than him – referring to Mr. Grimes’s preference to call on the phone instead of texting, or to meet in person instead of emailing or going on Teams.

99. Moreover, Mr. Sisti has been consistently negative about Mr. Grimes’s direct manner of speaking when expressing his opinion.

(5) "Bo has expressed little interest in developing or growing at 1440 Foods," and Mr. Grimes did not have a “growth mindset” and had “minimal desire to grow accounts.”

100. Given that Mr. Grimes has successfully led a group of accounts that have significantly exceeded sale/profit targets each year while at 1440 Foods, and most recently accounted for 72% of the entire organization’s gross profit growth vs. budget in fiscal year 2023, this statement is patently false.

101. Over the years, Mr. Grimes’s responsibilities have increased, and he has grown his business each year.

102. Indeed, Mr. Grimes has consistently demonstrated the initiative to improve the Company’s business throughout his tenure. As mentioned *supra*, **Mr. Sisti made this statement in the FY2023 Review because Mr. Grimes refused to interview for the role as Mr. Donahue suggested he should.**

103. Mr. Donahue perceived Mr. Grimes’s refusal to interview as an indication of his

“minimal desire to grow accounts,” a veiled ageist observation.

104. In fact, in his one-on-one meetings with Mr. Donahue and Mr. Sisti, Mr. Grimes often repeated: “I am never leaving 1440 Foods, I love it here!”

105. Thus, contrary to the false narrative perpetrated by Messrs. Sisti and Donahue, Mr. Grimes was fully invested in his job with the Company.

106. In the FY2023 Review, Mr. Sisti made unsubstantiated statements such as characterizing Mr. Grimes “lacking accountability,” because Mr. Grimes had asked broker managers – whom the Company had hired to manage the business for specific retailers – to manage their accounts as they are contractually obligated to do.

107. Once again, this was an attempt by Mr. Sisti to malign Mr. Grimes.

108. In the past, none of Mr. Grimes’s supervisors had criticized him for his management style.

109. In fact, Mr. Salvatore and Mr. Cox had encouraged him to maintain broker contacts as he managed their work in the Company’s business.

110. Mr. Sisti made several comments and statements that had no basis, and it is obvious that he was scrambling to justify his flawed perception of Mr. Grimes, which was rooted in ageism.

111. This highly negative FY2023 Review, which was based on subjective judgments, and directed at one of the older employees in the Company – in conjunction with the Company’s pattern or practice of predominantly hiring younger employees – demonstrates a marked bias against older workers and constitutes compelling evidence of age-based discrimination at 1440 Foods.

VI. Mr. Sisti and Mr. Donahue Falsely Assure Mr. Grimes That He Will Not Lose His Job

112. In his three years working at 1440 Foods, Mr. Grimes had received glowing performance reviews for his excellent work.

113. However, after the arrival of Mr. Sisti – who has repeatedly made ageist statements about Mr. Grimes such as he is “set in his ways” and “unwilling to change” – Mr. Grimes received his first negative performance review.

114. Indeed, the language of the FY2023 Review makes it obvious that Mr. Sisti has an issue with Mr. Grimes’s age and seasoned management style.

115. After Mr. Grimes received the FY2023 Review, Mr. Donahue texted Mr. Grimes saying that he did not want Mr. Grimes “worrying that [he was] on the chopping block.”

116. Such a statement was unsolicited and unprompted, and made Mr. Grimes uneasy.

117. To compound Mr. Grimes’s concern, Mr. Donahue also stated: “We have high expectations of our senior leaders, and I am confident you have all the talent to close any gaps,” acknowledging Mr. Grimes’s talent while also further highlighting the precariousness of Mr. Grimes’s position because of his age.

118. Following his dismal FY2023 Review, Mr. Grimes immediately asked Mr. Donahue why he had received unfairly negative ratings as he was worried that these unfounded and unprecedented low marks would serve as an excuse to terminate him.

119. Tellingly, in his meeting with Mr. Grimes on November 17, 2023, Mr. Donahue reiterated that he did not appreciate that Mr. Grimes refused to interview for the job Mr. Donahue recommended to him in March 2023, and that his refusal demonstrated a “lack of willingness to grow” at the Company.

120. When prodded for more reasons for the poor review, Mr. Donahue stated that he had “no specific reasons” why Mr. Grimes received the low ratings.

121. Clearly, Mr. Grimes was being retaliated against for not interviewing for the job Mr. Donahue had recommended to him.

122. The same day, Mr. Grimes reached out to Mr. Sisti to inquire about the FY2023

Review.

123. Similarly, Mr. Sisti stated that the FY2023 Review was based on more of a “general feeling” regarding Mr. Grimes’s performance and that he had no specific examples of Mr. Grimes being a poor employee.

124. Thus, neither Mr. Donahue nor Mr. Sisti had any concrete reasons or examples of why Mr. Sisti had rated Mr. Grimes so poorly.

125. Through the language of the FY2023 Review and Mr. Sisti’s manner of speaking to Mr. Grimes, however, it was unmistakable that Mr. Sisti’s adverse action against Mr. Grimes stemmed from his subjective biases, driven by personal dislike for Mr. Grimes, and the age-related animus he fostered against him.

126. Nevertheless, for the time being, Mr. Grimes decided to stay calm and formulated a plan to enhance his performance and address any shortcomings by setting up weekly one-on-one meetings with Mr. Sisti and monthly meetings with Mr. Donahue.

VII. Mr. Sisti Further Subjects Mr. Grimes To Ageist Statements in His One-on-One Meetings with Mr. Grimes Before Mr. Grimes is Abruptly Terminated

127. During his one-on-one meetings with Mr. Grimes, Mr. Sisti frequently highlighted their differing communication styles, noting that Mr. Grimes’s directness contrasted with his own.

128. This critique, coupled with ageist statements like Mr. Grimes being “set in his ways,” implied that Mr. Grimes’s age and established mannerisms were at fault.

129. Put simply, Mr. Grimes was one of the older employees at the Company and Mr. Sisti did not seem to appreciate his “older” management style.

130. In a particular one-on-one meeting with Mr. Donahue, Mr. Grimes was told by Mr. Donahue that Mr. Grimes was not going to be terminated.

131. Unnerved by the constant reminder that the Company was apparently considering

his termination, Mr. Grimes began to reiterate in his meetings that he had no intention of leaving the Company since he had helped it grow tremendously and thoroughly enjoyed being a part of the Company.

132. However, on March 14, 2024, when Mr. Grimes logged onto his one-on-one Teams meeting with Mr. Sisti, he was ambushed by two members of HR (Gui Santos and Divya Rallabhandi), accompanied by Mr. Sisti who told Mr. Grimes that he was “terminated effective immediately.”

133. Mr. Grimes was shocked because he had been repeatedly assured that he would not be terminated.

134. Furthermore, neither Mr. Donahue nor Mr. Sisti had provided specific details regarding any shortcoming for Mr. Grimes to address, and Mr. Grimes had not been given sufficient time to correct any alleged performance deficiencies.

135. At that time, Mr. Grimes asked Mr. Santos why he was not given a Performance Improvement Plan (“PIP”) before being terminated.

136. Mr. Santos stated that the Company did not want to give Mr. Grimes a PIP and chose to terminate him immediately instead.

137. Thus, the negative FY2023 Performance Review was obviously used as pretext to justify his unlawful termination.

138. Despite Mr. Grimes’s determination to remain optimistic about and committed to his career at 1440 Foods, the discrimination he has suffered at his workplace has rendered him distraught and crest fallen.

139. Due to his unlawful termination from the Company, and the discrimination and harassment he has endured, Mr. Grimes has started receiving treatment for his mental health for the first time in his life to help cope with the immense stress and uncertainty he must now navigate in

what has become the most difficult period of his life.

140. Indeed, Mr. Grimes's emotional distress is cognizable given the reality that the Company has allowed Mr. Sisti to openly express his ageist remarks towards Mr. Grimes without repercussion and, instead, terminated Mr. Grimes's employment for no valid reason.

141. Rather than disciplining Mr. Sisti for his discriminatory conduct, the Company removed Mr. Grimes from his accounts and allowed Mr. Sisti to give Mr. Grimes the negative 2023 Review shortly before firing him abruptly.

VIII. 1440 Foods Violates the Stored Communications Act By Accessing Mr. Grimes's Personal Emails After He Was Terminated

142. Upon information and belief, John Doe accessed Mr. Grimes's personal email account by viewing his personal emails on his work computer, including but not limited to an email containing a lease for a café "PJ's Café" for which he is a passive investor. The email regarding the lease was sent to Mr. Grimes's personal email account in May 2024, two months after his termination and could only be accessed directly from the electronic communication service provider. See, e.g., Pure Power Boot Camp, Inc. v. Warrior Fitness Boot Camp, LLC, 587 F. Supp. 2d 548 at *555, (S.D.N.Y. Aug. 22, 2008) (finding that, "...[A] person violates the SCA if she accesses an electronic communication service or obtains an electronic communication while it is still in electronic storage, without authorization.").¹

FIRST CAUSE OF ACTION
VIOLATION OF SCA
(Against Defendant 1440 Foods and Defendant John Doe)

143. Plaintiff repeats and realleges each and every allegation made in the above

¹ In Pure Power Boot Camp, Inc., 587 F. Supp. 2d 548, Lauren Brenner (principal and owner of Plaintiff corporations and former employer of Defendants) had obtained Defendant Alexander Fell's username and password from his work computer and accessed Mr. Fell's emails after his termination from Plaintiff corporations without authorization. The court held that Brenner had accessed three electronic communication services, and she obtained Mr. Fell's emails while they were in storage on the service providers' system without authorization. This resulted in a violation of the SCA.

paragraphs of this Complaint as if fully set forth herein.

144. The Stored Communications Act, 18 U.S.C. § 2701, et. seq. (“SCA”), part of the Wiretap Act, provides in part: (a) Offense.--Except as provided in subsection (c) of this section whoever— (1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or (2) intentionally exceeds an authorization to access that facility; and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

145. Based on the facts alleged herein, Defendant 1440 Foods and John Doe engaged in a violation of the SCA by intentionally accessing Plaintiff’s personal emails without authorization.

146. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages including but not limited to economic and pecuniary losses; severe emotional, psychological and physical stress, distress, anxiety, pain and suffering; the inability to enjoy life's pleasures; and other non-pecuniary losses and special damages.

147. Accordingly, as a result of the unlawful conduct of Defendant 1440 Foods and John Doe set forth herein, Plaintiff has been damaged and is entitled to the maximum compensation available to him under this law, including, but not limited to, punitive damages.

SECOND CAUSE OF ACTION
DISCRIMINATION UNDER ADEA
(Against Defendant 1440 Foods Only)

148. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if fully set forth herein.

149. Based on the facts alleged herein, Defendant 1440 Foods engaged in unlawful employment practices prohibited by ADEA by discriminating against Plaintiff because of his age.

150. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages, including, but not limited to, economic and pecuniary losses, severe emotional, psychological and physical stress, distress, anxiety, pain and suffering, the inability to enjoy life's pleasures, and other non-pecuniary losses and special damages.

151. Accordingly, as a result of the unlawful conduct of Defendant 1440 Foods set forth herein, Plaintiff has been damaged and is entitled to the maximum compensation available to him under this law, including, but not limited to, liquidated damages.

THIRD CAUSE OF ACTION
RETALIATION UNDER ADEA
(Against Defendant 1440 Foods Only)

152. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if fully set forth herein.

153. Based on the facts alleged herein, Defendant 1440 Foods engaged in unlawful employment practices prohibited by the ADEA by retaliating against Plaintiff for engaging in protected activity, such as terminating him after complaining about the age discrimination and retaliation.

154. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages, including, but not limited to, economic and pecuniary losses, severe emotional, psychological and physical stress, distress, anxiety, pain and suffering; the inability to enjoy life's pleasures, and other non-pecuniary losses and special damages.

155. Accordingly, as a result of the unlawful conduct of Defendant 1440 Foods set forth herein, Plaintiff has been damaged and is entitled to the maximum compensation available to him under this law, including, but not limited to, liquidated damages.

FOURTH CAUSE OF ACTION
DISCRIMINATION UNDER NYSHRL
(Against Defendant 1440 Foods and
Individual Defendants)

156. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if fully set forth herein.

157. New York Executive Law § 296 provides that:

It shall be an unlawful discriminatory practice: "(a) For an employer or licensing agency, because of an individual's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

158. Based on the facts alleged herein, Defendant 1440 Foods and Individual Defendants engaged in unlawful employment practices prohibited by the NYSHRL by discriminating against Plaintiff on the basis of his age.

159. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages including but not limited to economic and pecuniary losses; severe emotional, psychological and physical stress, distress, anxiety, pain and suffering; the inability to enjoy life's pleasures; and other non-pecuniary losses and special damages.

160. Accordingly, as a result of the unlawful conduct of Defendant 1440 Foods and Individual Defendants set forth herein, Plaintiff has been damaged and is entitled to the maximum compensation available to him under this law, including, but not limited to, liquidated damages.

FIFTH CAUSE OF ACTION
RETALIATION UNDER NYSHRL
(Against Defendant 1440 Foods and
Individual Defendants)

161. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if fully set forth herein.

162. By the actions detailed above, among others, Defendant 1440 Foods and Individual Defendants engaged in retaliation against Plaintiff based on his protected activities in violation of the NYSHRL, including, most recently, terminating Plaintiff's employment.

163. As a direct and proximate result of Defendant 1440 Foods and Individual Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered and continues to suffer monetary and/or economic harm, for which he is entitled to an award of damages, in addition to reasonable attorneys' fees and expenses.

164. As a direct and proximate result of Defendant 1440 Foods and Individual Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, mental anguish and severe emotional distress, for which he is entitled to an award of damages.

165. Defendant 1440 Foods and Individual Defendants' unlawful and retaliatory actions constitute malicious, willful, and wanton violations of the NYSHRL, for which Plaintiff is entitled to an award of punitive damages.

SIXTH CAUSE OF ACTION
AIDING AND ABETTING UNDER NYSHRL
(Against Individual Defendants)

166. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if fully set forth herein.

167. New York State Executive Law §296(6) provides that it shall be an unlawful

discriminatory practice: "For any person to aid, abet, incite compel or coerce the doing of any acts forbidden under this article, or attempt to do so."

168. Individual Defendants engaged in an unlawful employment practice in violation of New York State Executive Law § 296(6) by aiding, abetting, inciting, compelling, and coercing the discriminatory conduct against Plaintiff.

169. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages including but not limited to economic and pecuniary losses; severe emotional, psychological and physical stress, distress, anxiety, pain and suffering; the inability to enjoy life's pleasures; and other non-pecuniary losses and special damages.

170. Accordingly, as a result of Individual Defendants' unlawful conduct, Plaintiff has been damaged as set forth herein and is entitled to the maximum compensation available to him under this law, including, but not limited to, liquidated damages.

SEVENTH CAUSE OF ACTION
DISCRIMINATION UNDER THE NYCHRL
(Against Defendant 1440 Foods and
Individual Defendants)

171. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if fully set forth herein.

172. New York City Administrative Code §8-107(1) provides that it shall be unlawful discriminatory practice: "(a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation, or alienage or citizenship status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions, or privileges of employment."

173. Based on the facts alleged herein, Defendant 1440 Foods and Individual

Defendants engaged in unlawful employment practices prohibited by the NYCHRL by discriminating against Plaintiff on the basis of his age.

174. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages including but not limited to economic and pecuniary losses; severe emotional, psychological and physical stress, distress, anxiety, pain and suffering; the inability to enjoy life's pleasures; and other non-pecuniary losses and special damages.

175. Accordingly, as a result of the unlawful conduct of Defendant 1440 Foods and Individual Defendants set forth herein, Plaintiff has been damaged and is entitled to the maximum compensation available to him under this law, including, but not limited to, liquidated damages.

EIGHTH CAUSE OF ACTION
RETALIATION UNDER NYCHRL
(Against Defendant 1440 Foods and
Individual Defendants)

176. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if fully set forth herein.

177. By the actions detailed above, among others, Defendant 1440 Foods and Individual Defendants engaged in retaliation against Plaintiff based on his protected activities, including, most recently, terminating Plaintiff's employment, in violation of the NYCHRL.

178. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages, including, but not limited to, economic and pecuniary losses; severe emotional, psychological, and physical stress, distress, anxiety, pain and suffering; the inability to enjoy life's pleasures; and other non-pecuniary losses and special damages.

179. Accordingly, as a result of Defendant 1440 Foods and Individual Defendants' unlawful conduct, Plaintiff has been damaged as set forth herein and is entitled to the maximum compensation available under this law.

TENTH CAUSE OF ACTION
AIDING AND ABETTING UNDER NYCHRL
(Against Individual Defendants)

180. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if fully set forth herein.

181. New York City Administrative Code §8-107(6) provides that it shall be unlawful Discriminatory practice for “any person to aid, abet, incite, compel or coerce the doing of any acts forbidden under this chapter, or attempt to do so.”

182. Individual Defendants engaged in an unlawful employment practice in violation of New York City Administrative Code §8-107(6) by aiding, abetting, inciting, compelling, or coercing the discriminatory conduct against Plaintiff.

183. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages including but not limited to economic and pecuniary losses; severe emotional, psychological and physical stress, distress, anxiety, pain and suffering; the inability to enjoy life's pleasures; and other non-pecuniary losses and special damages.

184. Accordingly, as a result of the unlawful conduct of Individual Defendants, Plaintiff has been damaged as set forth herein and is entitled to the maximum compensation available under this law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests a judgment against Defendants:

A. Declaring that Defendants engaged in unlawful employment practices prohibited by the Stored Communications Act, 18 U.S.C. § 2701 (“SCA”) the New York State Human Rights Law; the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 *et seq.* (“ADEA”); New York State Executive Law, §§ 296 *et seq.* (“NYSHRL”); and the New York City Human Rights Law, Administrative Code §§ 8-107, *et seq.* (“NYCHRL”).

B. Awarding damages to Plaintiff for all lost wages and benefits resulting from Defendants' unlawful discrimination and to otherwise make him whole for any losses suffered as a result of such unlawful employment practices;

C. Awarding Plaintiff compensatory damages for mental, emotional, and physical injury, distress, pain and suffering, and injury to his reputation in an amount to be proven at trial;

D. Awarding Plaintiff punitive damages;

E. Awarding Plaintiff liquidated damages;

F. Awarding Plaintiff attorneys' fees, costs, disbursements, and expenses incurred in the prosecution of this action; and

G. Awarding Plaintiff such other and further relief as the Court may deem equitable, just, and proper to remedy Defendants' unlawful employment practices.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: April 8, 2025
New York, New York

Respectfully submitted,

FILIPPATOS PLLC



By: _____
Erica T. Healey-Kagan
Mahnoor J. Khan
425 Madison Avenue, Suite 1502
New York, New York
T. F: (212) 202-0234
ehealeykagan@filippatos.com
mkhan@filippatoslaw.com
Attorneys for Plaintiff