

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

DAVID ASHE

Plaintiff,

vs.

DISTRIBUIDORA NORMA, INC.,
CARVAJAL S.A., EDITORIAL NORMA
S.A., JOHN DOE I-X, ABC INSURANCE
COMPANIES, DEF UNKNOWN JOINT
TORTFEASORS,

Defendants.

CIVIL NO.10 – 2236 (DRD)

JURY TRIAL DEMANDED

AMENDED COMPLAINT

TO THE HONORABLE COURT:

APPEARS NOW Plaintiff David Ashe, duly represented by the undersigned counsel, and respectfully states, alleges and demands judgment as follows:

JURISDICTION AND VENUE

1. This Honorable Court has federal subject matter jurisdiction to hear this matter pursuant to 28 U.S.C. § 1331 as it involves claims under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634 (“ADEA”).
2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367 for those claims arising under Puerto Rico law and included herein.
3. Venue lies in this District, pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 2000e-5(f)(3)

since the Plaintiff and Defendants reside or are doing business within this District and this District is where the acts giving rise to this Complaint took place.

PARTIES

4. Plaintiff David Ashe (hereinafter “Mr. Ashe”) is of legal age and a citizen and resident of Puerto Rico.
5. Defendant Distribuidora Norma, Inc. (“Norma”) is a corporation organized and operating in Puerto Rico, which is in the publishing and printing business.
6. Defendant Editorial Norma S.A. (“Editorial Norma”) is a company organized by law in Colombia, and is a subsidiary of Carvajal S.A.
7. Defendant Carvajal S.A. of Colombia (“Carvajal”) is a company organized by law in Colombia, and is the parent company of Distribuidora Norma, Inc. and Editorial Norma.
8. Defendants John Doe I-X are unknown individuals or entities who are responsible for the occurrences alleged herein and liable for Plaintiff’s damages. They are fictitiously named herein to be later replaced by their actual names, which may become known through further discovery in this litigation.
9. Defendants ABC Insurance Companies are unknown insurance companies which provide insurance coverage to Defendants for incidents occurring as alleged herein. They are fictitiously named herein to be later replaced by their actual names, which may become known through further discovery in this litigation.
10. Joint Tortfeasors DEF are unknown joint tortfeasors who are jointly and severally responsible for the causes of action included herein. They are fictitiously named herein to be later replaced by their actual names, which may become known through further

discovery in this litigation.

GENERAL ALLEGATIONS

11. Mr. Ashe was born on November 8, 1965.
12. Mr. Ashe began working for Carvajal in 1990 when he accepted a managerial position with the company in Miami, Florida.
13. By 2005, Mr. Ashe had worked his way up to being President of B2Bportales, Inc., a Carvajal company in Florida.
14. Mr. Ashe was responsible for Carvajal's performance in the United States, and he reported the status of United States sales and business activities directly to Carvajal's international board.
15. In 2005, Mr. Ashe's employment responsibilities were expanded to include the position of country manager of the Caribbean (including, but not limited to, Puerto Rico), while he simultaneously continued to serve as President of B2Bportales, Inc.
16. As a part of this added role, Mr. Ashe moved to Puerto Rico and became responsible for the business activities of Norma.
17. In late 2009/early 2010, a comprehensive evaluation was conducted of Mr. Ashe, who excelled in all facets of the evaluation.
18. In December 2009, Mr. Ashe was removed from his position as President of B2Bportales, Inc. and continued working solely as country manager of the Caribbean in Puerto Rico as an employee of the Defendants.
19. Via letter dated June 30, 2010, Mr. Ashe was notified that his position as country manager of the Caribbean was being eliminated, effective that same date.

20. This employment termination letter was sent to Mr. Ashe on Editorial Norma S.A. letterhead and signed by Gustavo Adolfo Carvajal, President of Editorial Norma S.A.
21. Notwithstanding that fact, Mr. Ashe's position was actually filled by Mr. Juan D. Calero after Mr. Ashe's termination.
22. Mr. Calero was promoted by Defendants from within Norma to take Mr. Ashe's position.
23. At the time of Mr. Ashe's termination, he was 44 years old.
24. At the time Mr. Calero replaced Mr. Ashe, Mr. Calero was 34 years old.
25. At all times, Mr. Ashe met Carvajal and Norma's legitimate job performance expectations.
26. Mr. Ashe was fired from his employment by Carvajal and Norma because of his age.
27. Mr. Ashe was discriminated against due to his age.
28. Mr. Ashe was not paid any "mesada" or severance payment, as stipulated by PR Law 80, or any other kind of severance payment corresponding to his twenty years of employment (1990-2010).
29. At the time of his termination, Mr. Ashe had an annual salary of \$285,816.
30. After his termination, Mr. Ashe diligently sought and obtained new employment in Puerto Rico.
31. Mr. Ashe's new annual salary is \$160,000.
32. Mr. Ashe's new employment represents a significant reduction in the salary he earned from Carvajal and Norma prior to his termination.
33. Defendants unlawfully discriminated and terminated Mr. Ashe's employment in violation of state and federal law.

34. No just cause existed for the actions of Defendants and any purported justification for Defendants' actions, specifically including termination, are a pretext.
35. Mr. Ashe timely filed a charge with the Equal Employment Opportunity Commission ("EEOC") on September 20, 2010. *See Exhibit A.*
36. The EEOC assigned the matter number 515-2010-00577, and issued a Notice of Right to Sue on November 5, 2010. *See Exhibit B.*

FIRST CAUSE OF ACTION UNDER ADEA

37. Plaintiff re-alleges and incorporates herein by reference all paragraphs as though fully set forth herein.
38. Defendants unlawfully discharged and discriminated against Mr. Ashe with respect to his employment because of his age, in violation of 29 U.S.C. §§ 621-634 ("ADEA").
39. Specifically, Defendants terminated Mr. Ashe at age 44 when he was meeting his employers' legitimate job performance expectations, while a younger person (Mr. Calero, aged 34) was retained for the same position.
40. The intentional unlawful actions taken by Defendants constitute intentional unlawful discrimination.
41. Any basis for Mr. Ashe's termination, other than discrimination due to age, is a pretext.
42. As a result of Defendants' unlawful acts and omissions, Plaintiff has suffered and is entitled to an award for damages, including but not limited to, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.
43. As a result of Defendants' unlawful actions, Plaintiff seeks punitive damages, including liquidated or double damages, as allowed by law.

44. As a result of Defendants' unlawful actions, Plaintiff is entitled to attorney's fees.

SECOND CAUSE OF ACTION - LAW 100

45. Plaintiff re-alleges and incorporates herein by reference all paragraphs as though fully set forth herein.

46. Defendants unlawfully discharged and discriminated against Mr. Ashe with respect to his employment because of his age, in violation of 29 L.P.R.A. § 146 ("Law 100").

47. The unlawful actions taken by Defendants were done intentionally and constitute intentional unlawful discrimination.

48. As a result of Defendants' unlawful acts and omissions, Plaintiff has suffered damages, including but not limited to, future pecuniary losses, lost salary, lost profits, emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life and is entitled to an award of twice the amount of damages sustained pursuant to 29 L.P.R.A. § 146(a)(1).

THIRD CAUSE OF ACTION - LAW 80

49. Plaintiff re-alleges and incorporates herein by reference all paragraphs as though fully set forth herein.

50. Plaintiff was discharged by Defendants on June 30, 2010 without just cause in violation of 29 L.P.R.A. § 185(a).

51. Pursuant to 29 L.P.R.A. § 185(a), Plaintiff is entitled to receive \$472,696 as a result of his twenty years of service for the company from 1990 - 2010.

FOURTH CAUSE OF ACTION - NEGLIGENCE

52. Plaintiff re-alleges and incorporates herein by reference all paragraphs as though fully set

forth herein.

53. The Defendants and unknown Defendants named as John Doe I-X and unknown joint tortfeasors DEF, through their acts or omissions, caused damages to Plaintiff through fault or negligence, in violation of Article 1802, 31 L.P.R.A. § 5141 and/or Article 1803, 31 L.P.R.A. § 5142.
54. The Defendants owed a duty to Plaintiff not to terminate him from his employment due to his age without just cause.
55. On June 30, 2010, Defendants breached their duty by terminating Mr. Ashe due to his age and without just cause.
56. As a direct and proximate result of Defendants' actions, Plaintiff has suffered economic damages and emotional pain and suffering.

FIFTH CAUSE OF ACTION - INSURER'S LIABILITY

57. Plaintiff re-alleges and incorporates herein by reference all paragraphs as though fully set forth herein.
58. Pursuant to 26 L.P.R.A. § 2001, an insurance company is liable for the negligence or fault of its insured.
59. Pursuant to 26 L.P.R.A. § 2003, an action against an insurer may be brought separately or may be joined together with an action against its insured.
60. Defendants ABC Insurance Companies are jointly and severally liable to Plaintiff for those damages directly and proximately caused by their respectively insured Defendants or for which Defendants are liable by operation of statute.

DAMAGES

61. Plaintiff re-alleges and incorporates herein by reference all paragraphs as though fully set forth herein.
62. Plaintiff is entitled to future pecuniary losses, lost salary, lost profits, emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.
63. Plaintiff has suffered and is entitled to lost past and future wages and benefits in an amount of no less than \$2,875,000 calculated at \$125,000 per annum.
64. Plaintiff has suffered and is entitled to lost and unpaid commissions and bonuses in an amount of no less than \$460,000 calculated at \$20,000 per annum.
65. Plaintiff has suffered certain special damages due to lost benefits, including but not limited to the lost use of a company car and health insurance, in an amount of no less than \$52,460.
66. Plaintiff has suffered and is entitled to an award for emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life in an amount of no less than \$500,000.
67. Plaintiff is entitled to a payment (or “mesada”) in the amount of \$472,696 pursuant to Law 80, 29 L.P.R.A. §185(a).
68. Plaintiff is entitled to liquidated or double damages pursuant to the ADEA.
69. Plaintiff is entitled to double damages pursuant to Law 100.
70. Plaintiff is entitled to attorneys’ fees.

JURY DEMAND

71. Plaintiff demands trial by jury.

WHEREFORE, David Ashe respectfully demands judgment against Defendants, jointly and severally, in an amount to be determined at trial, plus any applicable increase or doubling provided by statute, punitive damages awarded, attorney's fees, and all other relief which the Court deems just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 3rd day of May, 2011.

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