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SUPERIOR COURT OF NJ

ESSEX COUNTY

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SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: ESSEX COUNTY

DOCKET NO.: *ESX 10034-10*

Civil Action

COMPLAINT AND JURY DEMAND

THERESA SEIBERT, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

QUEST DIAGNOSTICS INCORPORATED,
SURYA N. MOHAPATRA, JOHN
NOSENZO and TOM SCHOENHERR,

Defendants.

Plaintiff Theresa Seibert ("Plaintiff") on behalf of herself and all others similarly situated, by and through her counsel, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff seeks redress from defendant Quest Diagnostics Incorporated ("Quest" or the "Company") for systematic violations of the New Jersey Law Against Discrimination ("NJLAD") N.J.S.A. 10:5-1 et seq., on her own behalf and on behalf of all others similarly situated.

2. This action arises out of Quest's determination to restructure its sales force. This restructuring was planned, directed and implemented by Quest's management operating from corporate headquarters in New Jersey. The restructuring was designed to change the look of the Quest sales force by causing older experienced people, many of whom had been with Quest for decades, to leave the employ of the Company either by firing them or, to use Quest's

terminology, by “managing them out”. The existing sales force, the “Old Quest,” was largely replaced by younger people with significantly less experience, the “New Quest.” During the course of the Class Period (defined below), Quest employed a uniform corporate policy or practice by misusing so-called “performance improvement plans” and coachings with the sole goal of eliminating older members of the sales force to make way for what it called a “Ken and Barbie” sales force consisting of young inexperienced employees. The corporate policy, referred to variously as “managing people out,” “donating them to the industry,” and “getting rid of dead wood,” had its desired effect. During the course of the Class Period, Quest’s plan resulted in an overhaul of its existing sales force, and a revamped sales force reportedly having an average tenure of less than 18 months. Quest’s plan and its actions violated the rights of plaintiff and the Class under the NJLAD.

PARTIES

3. Plaintiff Theresa Seibert, an individual residing in Sandyston Township, Sussex County, New Jersey, was employed by Quest for over twenty-six years prior to her involuntary termination on January 28, 2010. For the past twenty-six years, plaintiff was part of the Company’s sales force and prior to and during the Class Period worked as an Account Sales Representative. Throughout her employment and prior to the events complained of herein, Plaintiff performed her job and was consistently rated by Quest as either meeting or exceeding expectations in her reviews.

4. Defendant Quest Diagnostics Incorporated, a Delaware corporation, is the world’s leading provider of diagnostic testing, information and services. Quest’s corporate headquarters are in Madison, New Jersey, and the Company operates laboratories, patient service centers, offices and other facilities around the United States and in locations outside the United States.

Many of the acts, as well as the unlawful course of conduct charged herein, occurred in and were accomplished by means of corporate directives issued from Quest's headquarters in New Jersey. In 2009, Quest generated net revenues of \$7.5 billion and processed approximately 148 million test requisitions.

5. Defendant Surya N. Mohapatra, an individual residing in the state of New Jersey, is and was at all times relevant to this action the Chairman of the Board, President and Chief Executive Officer of Quest.

6. Defendant John Nosenzo, an individual residing in the state of New Jersey, was the Vice President of Sales and Marketing at Quest, a position he held during most of the Class Period.

7. Defendant Tom Schoenherr, an individual residing in the state of New Jersey, was a Regional Vice President of Sales at Quest, a position he held during most of the Class Period.

JURISDICTION AND VENUE

8. Venue is proper in this county under N.J. Court Rule 4:3-2. Quest transacts business throughout the State of New Jersey in general and within Essex County specifically by virtue of the fact that it has clients, patient service centers and conducts in-office phlebotomy in doctors' offices in Essex County.

9. Defendant Quest is within the jurisdiction of this Court. Quest maintains its corporate headquarters in New Jersey and operates out of other sites within the State of New Jersey including a major laboratory facility in Teterboro, New Jersey. Quest paid its employees situated all over the country with checks issued by corporate headquarters in New Jersey. Quest administered employee benefit plans for employees all over the country out of its offices in

Lyndhurst, New Jersey. Defendants have obtained the benefits of the laws of the State of New Jersey and the New Jersey labor markets.

FACTUAL BACKGROUND

Quest Corporate Structure And Policies

10. At all times relevant, Quest's business was divided into three basic segments. The largest segment of its business pertained to testing performed for doctors; in 2009, this segment of Quest's business accounted for roughly \$5 billion of Quest's \$7.5 billion in revenues. The two other segments pertained to testing performed for hospitals and managed care.

11. During the Class Period, Quest operated business units around the United States that were organized into three regions covering the Eastern, Central and Western parts of the United States; at some point during the Class Period, the Eastern and Central region were combined under a single Regional Vice President, Tom Schoenherr ("Schoenherr"). Each of the regions was headed up by a regional vice president of sales who maintained an office in New Jersey and who reported to the vice president of sales and marketing. John Nosenzo ("Nosenzo"), who lived in New Jersey and worked out of corporate headquarters in Madison, held that position from 2008 through 2010. Nosenzo reported directly to Surya Mohapatra, Quest's President, Chief Executive Officer and the Chairman of Quest's board of directors ("Mohapatra").

12. Sales Directors, who were responsible for the business units, reported to the Regional Vice Presidents. Under the Sales Directors and reporting to them, there were District Sales Managers to whom the sales force, including Account Executives, Account Managers and Account Sales Representatives, reported.

13. Quest issued a 2009 “Corporate Citizenship Report” dated July 2010 that was signed by Mohapatra, Quest’s President and Chief Executive Officer. Though Quest purported to be committed to being a “responsible corporate citizen” and to comply strictly with applicable laws and regulations, www.questdiagnostics.com/brand/company/b_comp_vision.html, it stated in its 2009 Corporate Citizenship Report that it “valued [employees] for their own unique combination of factors, such as age, race, gender, disability, appearance, family status, language, sexual orientation, values and education.” (emphasis added). As discussed below, defendants did use employees’ appearance as a means of accomplishing the wrongful acts complained of herein.

14. In its 2008 Annual Report to Shareholders dated February 17, 2009, Quest reported its financial results and advised that 2008 was a year of “solid performance” and that its business was “healthy and strong” despite the economic environment. The 2008 Report addressed the worldwide economic downturn and stated that the Company was “bifocal” in its approach to these challenges: “doing what is right in the short term and *reshaping our business to position us well for long-term success.*” Mohapatra reported to shareholders that Quest had attained higher earnings “driven by a company-wide initiative we launched more than two years ago to *reshape, remake and re-energize our company....*To date, this initiative, focused on driving continuous improvement, has removed more than \$300 million from our cost structure. By the end of 2009, we will have reduced our cost structure by \$500 million.”

15. During an April 21, 2010 conference call concerning the Company’s quarterly earnings, Mohapatra stated that Quest’s business had been “negatively impacted by severe weather and softness in the marketplace.” The Company’s chief financial officer, Robert Hagemann, who also participated in the conference call, echoed Mohapatra’s sentiment, stating

that, “[d]uring the quarter, we saw a slowing in our growth due to severe weather and softness in the market place.” Hagemann explained that the company’s business was suffering from an overall slowdown in traditional office visits, which was occurring “pretty much across the board [geographically]” and that Quest did not expect the trend “to turn around any time in the near future.”

16. During the April 21, 2010 call, Quest noted that it would respond “aggressively” and that it planned to overcome the softness in the marketplace “by upgrading our sales talent and adding [representatives] in some markets.” Mohapatra said the Company wanted to “have the right talent,” that the pharmaceutical industry was shedding jobs and there were “good people” available from there. Mohapatra expressly stated that the Company was “adding some young people who are coming from other industries.” Mohapatra continued: “The key is to have a very engaging...[sales] organization.” Quest acknowledged that this “upgrading” process was ongoing: Quest had been “building up” and reorganizing its sales force for two years prior to the slowdown in the first quarter of 2010. Mohapatra explained that, because Quest’s “business is changing . . . and that’s actually nothing new,” an “appropriate” shift in its sales force had been taking place for the past two years. In the first quarter of 2010, Quest announced that it would “accelerate that plan”, at least in part, “because of the softness in the market.”

The Corporate Plan To “Manage” Plaintiff And The Class Out Of The Company

17. In late 2007, Quest hired Nosenzo to serve as Vice President, Sales and Marketing. Nosenzo, who had previously worked for Siemens Medical Solutions, joined Quest in January 2008. During Nosenzo’s two and one-half year tenure at Quest and under his direction and with the express approval of Mohapatra, Quest implemented a plan to cut Quest’s sales force and to change the face of that sales force. Age and experience, once valued at Quest,

were no longer desired traits. Long tenured employees, once a hallmark of the Company's corporate culture, were now considered a liability. This strategy was devised and implemented by Quest's Mohapatra and Nosenzo and effectuated by, among others, Nosenzo and Schoenherr and other members of corporate management operating from the Company's New Jersey headquarters. The directives to effectuate this new strategy were issued by Quest corporate management from corporate headquarters and numerous meetings were held before and during the Class Period in New Jersey and at corporate headquarters to effectuate this new strategy.

18. That the new strategy targeted older employees was clear. At one of the events surrounding a three day meeting in late 2008, Mohapatra inquired about one of the business units that made up Quest. His inquiry was rhetorical as he apparently was well aware of the answer to the question he posed. He asked what the average age was of the persons employed by the business unit. When a specific response to the question was not forthcoming, Mohapatra answered his own question: "48 years old" and, he added pointedly, "no one ever leaves." Quest's new strategy, carried out by Mohapatra's lieutenant Nosenzo and others was designed to take care of that problem at least insofar as the sales force was concerned. Mohapatra's remarks were not the only clue that Quest was focused on getting rid of older employees. Defendant Schoenherr, a regional vice president brought in by Nosenzo from Siemens, who is in his 30s, interviewed one 53 year old employee as an internal candidate for a lower paying position (after she was "managed out" of her sales position under the threat of being fired) and stated that "it would look good for him to give her the job because people are saying that I don't hire older workers."

19. Prior to Nosenzo's arrival at Quest, the Quest sales force included many people who had worked at Quest for decades. These sales force personnel had extensive experience

working at Quest, had great familiarity with Quest's product line and had established long-standing relationships with many of Quest's customers. In accord with Quest's policies in effect prior to 2008, the sales force, which included plaintiff and other class members, was compensated based upon their years of experience at Quest and their experience in the industry among other factors.

20. Starting in 2008, with the express approval and involvement of Mohapatra, under the direction of Nosenzo and as effectuated by Nosenzo, Schoenherr and others, Quest implemented a new strategy. At the heart of this strategy was Quest's determination that, contrary to its stated policies of inclusion and diversity, an experienced sales force was not necessary to sell the Company's various testing products or to service existing customers. Instead, Quest determined that it would replace its experienced sales force with a younger, inexperienced sales force thus lowering the Company's cost structure. The theory behind this strategy, espoused by Nosenzo who had employed it elsewhere, was that no special skills were required to sell Quest's product line. In determining to implement this strategy, Quest undertook a program to change the look and appearance of its sales force, to rid itself of plaintiff and Class members who represented the "Old Quest" and to replace those long term employees (many of whom had worked in the sales force for decades) with an "engaging," younger looking "Ken and Barbie" sales force, mirroring the "Big Pharma" model sales force, that would represent the "New Quest."

21. To carry out this strategy, Quest undertook an across-the-board program to "manage" plaintiff and the Class members out of its sales force. The program to "manage people out" and "donate them to the industry" was formulated at the highest corporate level at Quest. Pursuant to that program and at the express direction of Quest corporate management issued

from New Jersey headquarters, Quest business units around the country began to conduct regular “performance reviews”. These “reviews” and the “scorecards” employed in the review process were used to determine who among the sales force would next be “managed out” of the Company and “donated to the industry.” The program, comprised of evaluations, coaching and Performance Improvement Plans (“PIPs”), was no more than a charade or a pretext for firing members of the sales force or otherwise making their professional lives so unpleasant that they would, in defendants’ terminology and with their assistance, “self select” and seemingly leave of their own accord without the necessity of Quest actually firing them. Contradicting its position that plaintiff and the Class members were being “managed out” because they were poor performers, Quest then enforced non-compete agreements stating that these “poor” performers would irreparably harm the Company if they were permitted to get competing jobs elsewhere.

22. Though the program was purportedly being conducted in conformity with Quest’s Sales Performance Management Policy and Standards and under the supervision of Quest’s Human Resources department, the program was a farce. The requirements of the PIPs were so onerous that virtually no person put on a PIP could ever improve to Quest’s satisfaction. In any event, the Company did not follow the process outlined in the PIPs nor did it adhere to its “Open Door” policy. Instead, once an employee was placed on a PIP, the process was inexorable. Instead of being provided with mentoring, guidance and assistance, employees placed on PIPs were railroaded through the process. The sales goals set in the PIPs were, by definition and by intention, unattainable. The sales quotas were based upon concededly unattainable numbers, particularly given the state of Quest’s business in 2008-2010. Though historically the Company had reset quotas annually providing quota relief due to changes in territories or other factors outside of an employee’s control, during the Class Period quota relief could be granted only by

defendant Nosenzo and was virtually unavailable to these employees. Employees placed on PIPs were not actually provided with any guidance or assistance to improve because, after all, that was not Quest's goal.

23. Employees who were successful at attaining quota despite the unrealistic demands made upon them and who were among the top producers in their regions or districts still found themselves being placed on PIPs. In some instances, those employees were told that, after years of cultivating customers and building up relationships with them, those customers were being reassigned and that now these employees would need to find new customers to satisfy their quotas. Employees who met the sales quotas (or "quantitative" goals) contained in their PIPs were advised by Quest management that they had not attained the "qualitative" goals contained in the PIPs. Employees who had served Quest faithfully and well for decades were told that they represented the "Old Quest" and, in the face of years of awards and accolades and successful quota attainment, were ridiculed and harassed at sales meetings held (in some instances) at corporate headquarters or attended by Quest corporate managers visiting from New Jersey. The use of PIPs to "manage people out" of the sales force was dictated by and carried out under the direction of Mohapatra, Nosenzo and Schoenherr from Quest corporate headquarters.

24. At the above mentioned sales meetings (sometimes called "Session Qs") during the Class Period, photographs of members of the sales force were displayed, which allowed managers not familiar with a particular sales person to judge an employee based upon appearance and to approximate his or her age. Sales force members whose appearance and actual or seeming age did not fit the profile for the "New" Quest were "booed" at these meetings and selected as candidates for PIPs.

25. Members of Quest management repeatedly pressured their subordinates to fire District Sales Managers, Account Executives, Account Managers and Account Sales Representatives. Resistance to these corporate directives was unavailing and often resulted in the firing of the middle manager not willing to “manage out” his subordinates. These mid-level managers were told: “They go or you go.” This direction had the desired effect.

26. The replacements for plaintiff and the Class, when any replacements were hired, fit the model of the “New” Quest. Most of the new members of the sales force were in their 20s or 30s. The new and younger employees were given “ramp up” quotas, which quotas were far lower than the numbers contained in the PIPs or that were given to the older, more senior employees.

27. Plaintiff Seibert’s experience is illustrative of the company-wide program undertaken to “manage employees out” of the Company and to replace them with or retain younger lower paid employees. Plaintiff served as an account representative in New Jersey for 21 years of her 26 year tenure at the Company. As of 2006, Quest had access to approximately 85% of insured lives in New Jersey. By late 2007 or early 2008, that number had dropped to 35%. As a result, and through no fault of Ms. Seibert’s (Ms. Seibert’s responsibility was not to seek new clients, but to attempt to sell new product to existing clients), her assigned quota became more difficult to attain, as Quest lost market share to competitors. Also, in 2008, Quest removed customers with whom plaintiff had long-standing relationships and reassigned those customers to other sales people.

28. Plaintiff’s immediate manager, Jerry Giordano, acknowledged on a number of occasions that plaintiff’s territory had to be reconfigured and consolidated with other territories in order to be sustainable, because it was too large geographically and did not have enough

customer accounts. Though she was not making quota, Giordano gave plaintiff a “Meets Expectations” on her 2008 performance review, and noted the “tumultuous market conditions in North Jersey”. Similarly, at plaintiff’s 2009 mid-year review, Giordano noted that plaintiff managed a rural area with “unique market dynamics” and acknowledged that they “left her territory with little opportunity to grow”. Plaintiff’s performance was, thus, directly tied to territorial issues beyond her control.

29. Despite plaintiff’s situation, Quest corporate management required Giordano to place plaintiff on a PIP. Plaintiff objected that placing her on a PIP was unnecessary, because the planned and customary territory (or quota) reset in 2010 would eliminate the negative accounts that were dragging down her attainment number and permit her, once again, to achieve her sales quota. She was placed on the PIP anyway.

30. Plaintiff completed her PIP tasks, with the exception of her attainment numbers, and received only positive feedback from Giordano, but, on December 16, 2009, he was forced to give her a “Final Warning”. Plaintiff once again spoke to Giordano about consolidating her territory, but Giordano said “his hands were tied.” He told her that he had been directed by his manager/corporate management to “accelerate her PIP and manage her out.”

31. After 26 years of dedicated employment and performance at Quest, Plaintiff was fired on January 28, 2010 for “poor performance.”

32. Three hours after terminating her, her accounts were redistributed among another Account Service Representative, an Account Executive, and internal sales. Ironically, shortly after Ms. Seibert was terminated, her territory was reset and she was listed as one of the top performers in her region.

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action on behalf of herself and a Class consisting of all persons over 40 years of age that were part of the Quest sales force who, after being placed on Performance Improvement Plans or being advised that they were going to be placed on such plans, were involuntarily terminated from the employ of Quest or resigned during the period from November 18, 2008 to the present (the "Class").

34. The prerequisites of a class action pursuant to Rule 4:32-1 are met in this case because of the following:

a. Numerosity: Members of the Class are so numerous that joinder of all members is impracticable. While the precise size of the Class is presently unknown and can only be ascertained through appropriate discovery of defendants' records, Plaintiff believes that the Class consists of more than forty (40) individuals.

b. Commonality: Common questions of law and fact exist as to all members of the Class. Among the questions of law and fact common to the Class are the following:

- i. whether Quest adopted a policy to "manage out" plaintiff and the Class in violation of its own corporate policies;
- ii. whether such policy violated the NJLAD; and
- iii. whether plaintiff and the Class were damaged thereby and, if so, the amount of damages.

c. Typicality: Plaintiff's claims are typical of the claims of the Class in that Plaintiff and all Class members were similarly affected by Quest's policy to "manage them out".

d. Adequacy: Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has no interest antagonistic to or in conflict with the interests of the Class as a whole. Plaintiff has retained counsel experienced in the prosecution of class actions in general and employment litigation in particular.

35. This action is maintainable as a class action under one or more of the following subsections of Rule 4:32-1:

a. Rule 4:32-1(b)(2): Quest has adopted the policy set forth above and "managed out" plaintiff and members of the Class. Quest has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive and declaratory relief with respect to the Class as a whole;

b. Rule 4:32-1(b)(3): Questions of law and fact common to the members of the Class predominate over any issues affecting only individual Class members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy presented by this complaint. Moreover, members of the proposed Class have little interest in individually controlling the prosecution of separate actions.

36. Plaintiff is aware of no other actions based on the same operative facts as the present action.

37. No undue difficulties are anticipated to result from the prosecution of this suit as a class action.

CLAIMS FOR RELIEF

COUNT I

Claim for Violation of N.J.S.A. § 10:5-12(a) Against Quest

38. Plaintiff incorporates and realleges by reference the foregoing paragraphs as if fully set forth herein.

39. Quest is an “employer” within the meaning of N.J.S.A. § 10:5-5(e).

40. During the Class Period, Quest employed and continues to employ a policy to “manage out” employees that discriminated against Plaintiff and the Class based on their age.

41. Members of Quest’s corporate management actually participated in and/or were willfully indifferent to, and continued to actually participate and/or be willfully indifferent to, the wrongful conduct described herein.

42. Quest’s conduct violates N.J.S.A. § 10:5-12(a) because it constitutes an unlawful employment practice and/or unlawful discrimination.

43. As a direct and proximate result of defendants’ aforementioned conduct, Plaintiffs and the Class have lost and will continue to lose economic benefits, including, but not limited to, loss of income; and have suffered and will continue to suffer emotional distress.

44. Plaintiff and the Class have standing to institute this action to enforce the provisions of the NJLAD pursuant to N.J.S.A. § 10:5-38, because they have been discriminated against in violation of its provisions.

COUNT II

Claim for Violation of N.J.S.A. § 10:5-12(e) Against The Individual Defendants

45. Plaintiff incorporates and realleges by reference the foregoing paragraphs as if fully set forth herein.

46. The Individual Defendants are “persons” within the meaning of N.J.S.A. § 10:5-12(e).

47. The Individual Defendants knowingly and substantially assisted Quest and each other in Quest’s violation of N.J.S.A. § 10:5-12(a) by implementing, approving and effectuating the violative, discriminatory policy and actions.

48. The Individual Defendants’ conduct violates N.J.S.A. § 10:5-12(e) because they aided, abetted, and incited each other and the Company, and compelled and/or coerced conduct forbidden by the NJLAD.

49. As a direct and proximate result of defendants’ aforementioned conduct, plaintiff and the class have lost and will continue to lose economic benefits, including, but not limited to, loss of income; and have suffered and will continue to suffer emotional distress.

50. Plaintiff and the Class have standing to institute this action to enforce the provisions of the NJLAD pursuant to N.J.S.A. § 10:5-38, because they have been discriminated against in violation of its provisions.

WHEREFORE, Plaintiff demands judgment against the defendants for the following:

- A. Certifying this action as a class action pursuant to Rule 4:32-1 et seq.;
- B. Appointing Green Savits & Lenzo LLC and Abbey, Spanier, Rodd & Abrams, LLP, as class counsel pursuant to Rule 4:32-2;

- C. Awarding Plaintiff and the Class reinstatement to their former positions and/or front pay;
- D. Awarding Plaintiff and the Class a permanent injunction against Defendant to prohibit, as provided by law, each of the unlawful practices, policies and patterns set forth herein;
- E. Awarding Plaintiff and the Class a permanent injunction against Defendant Quest to institute a policy that provides for appropriate remedial and corrective action for the violations of the NJLAD as alleged herein;
- F. Awarding Plaintiff and the Class damages suffered as a result of Defendants' unlawful conduct, including, but not limited to, back pay, lost benefits, compensatory damages including emotional distress, and punitive damages;
- G. Awarding Plaintiffs their attorneys' fees and costs pursuant to N.J.S.A. § 10:5-27.1, and/or the common fund theory as is appropriate; and
- H. Awarding such other and further relief as this Court deems just and equitable.

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Attorneys for Plaintiff and the Class

By: 
GLEN D. SAVITS

Dated: November 18, 2010

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues subject to trial by jury.

GREEN, SAVITS & LENZO, LLC
Attorneys for Plaintiff and the Class

By: 
GLEN D. SAVITS

Dated: November 18, 2010

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CERTIFICATION

I hereby certify that to the best of my knowledge, this matter is not the subject of any other action pending in any court or of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated at this time. I further certify that to the best of my knowledge, there are no non-parties who should be joined in this action at this time.

GREEN, SAVITS & LENZO, LLC

Attorneys for Plaintiff and the Class

By: 
GLEN D. SAVITS

Dated: November 18, 2010

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