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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LARRY HOUSTON, an individual,

Plaintiff,

v.

FOSTER DAIRY FARMS, a California
corporation, and CRYSTAL CREAMERY,
INC., a California corporation,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiff Larry Houston (“Plaintiff” or “Mr. Houston”) brings this action against Defendants for employment discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§2000e, *et seq.*, the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621 *et seq.*, and the California Fair Employment and

1 Housing Act (“FEHA”), Cal. Gov’t Code §§ 12900, *et seq.* Despite Plaintiff’s superior
2 qualifications and experience, Defendants’ adverse treatment of Plaintiff because he is an older
3 African-American employee resulted in Defendants’ discriminatory refusal to promote Plaintiff
4 to the Director of Transportation position.

6 PARTIES

7
8 2. Plaintiff is a citizen of the State of California. Plaintiff is an African-American
9 man who was more than 40 years of age at all relevant times. At all relevant times, Plaintiff
10 was employed by and performed work for Defendants as a Depot Branch Manager in Hayward,
11 California, the County of Alameda.

12 3. Defendant Foster Dairy Farms (“Foster Farms”) is a for-profit California
13 corporation with its principal place of business in Modesto, California, the County of
14 Stanislaus. Foster Farms is engaged in the business of producing and distributing food dairy
15 products.

16
17 4. Defendant Crystal Creamery, Inc. (“Crystal Creamery”) is a for-profit California
18 Corporation with its principal place of business in Modesto, California, the County of
19 Stanislaus. Crystal Creamery is engaged in the business of producing and distributing food
20 dairy products.

21 5. Foster Farms and Crystal Creamery are collectively referred to herein as
22 “Defendants.”

23
24 6. Defendants, and each of them, were employers within the meaning of Title VII,
25 the ADEA, and the FEHA.

JURISDICTION AND VENUE

7. This Complaint seeks damages for violations of the civil rights, privileges, and immunities guaranteed by Title VII, the ADEA, as well as California state law.

8. This Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. §§ 1331. This Court has jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367, as these claims arise out of the same case or controversy.

9. Plaintiff's claims arose in the County of Alameda, California. Venue therefore lies in the Northern District of California pursuant to 28 U.S.C. § 1391(b)(2). Pursuant to Civil Local Rule 3-2(d), this action shall be assigned to the San Francisco Division or the Oakland Division.

FACTUAL ALLEGATIONS

10. In or around November 2008, Plaintiff began working in Defendants' transportation department as a Depot Branch Manager in Hayward, California.

11. Plaintiff is informed and believes, and thereupon alleges, that in the over half century Defendants have been in business, no African-American has ever held the Director of Transportation role. Plaintiff is further informed and believes, and thereupon alleges, that he is only one of two African-Americans ever hired into a manager role in Defendants' history.

12. As a Depot Branch Manager, Plaintiff reports to the Director of Transportation. During the entirety of Plaintiff's employment, the Director of Transportation position has been held by a Caucasian man, most of whom Plaintiff is informed and believes, and thereon alleges, were younger than Plaintiff.

13. At all relevant times, Plaintiff has performed the duties of the Depot Branch

1 Manager in Hayward satisfactorily.

2 14. Throughout his employment with Defendants, Plaintiff has received positive
3 performance reviews.

4 15. Over the years, whenever the Director of Transportation position became open,
5 Defendants have repeatedly failed to promote Plaintiff to Director of Transportation in favor of
6 less qualified Caucasian candidates and younger candidates. Defendants also failed to post the
7 position so that interested employees such as Plaintiff could apply.
8

9 16. For example, in or around 2012, a younger Caucasian employee, Colby Bell, was
10 promoted to the position of Director of Transportation without the position being posted.
11 Plaintiff is informed and believes, and based thereon alleges, that company policy at the time
12 required Defendants to post the open position.
13

14 17. Mr. Bell lasted in the Director of Transportation position until around March
15 2014.

16 18. In or around April 2014, Plaintiff learned that Defendants had promoted Doug
17 Peterson, a younger Caucasian man, into the position of Director of Transportation (to replace
18 Colby Bell). Defendants did not post the job before promoting Mr. Peterson. Plaintiff is
19 informed and believes, and based thereon alleges, that company policy at the time required
20 Defendants to post the open position.
21

22 19. Shortly after Mr. Peterson was promoted to Director of Transportation in or
23 around April 2014, Plaintiff contacted Defendants' human resources department to inquire
24 about why the job had not been posted so Plaintiff could have applied and been considered.
25 Plaintiff never received a satisfactory answer.

26 20. On or around May 23, 2017, Plaintiff filed a charge of discrimination with the
27
28

1 Equal Employment Opportunity Commission (“EEOC”), charge no. 555-2017-00504, against
2 Defendants alleging that Defendants were discriminating against Plaintiff on account of his race
3 and age. Plaintiff alleged in his EEOC charge no. 555-2017-00504 that “[o]n or about February
4 7, 2017, Doug Petersen, Director of Transportation, subjected me to disparate treatment and
5 terms of conditions of employment when it [sic] allowed another white, younger Manager to
6 delegate Purchase Orders to his staff but I was not afforded the same opportunity. On or about
7 February 8, 2017, I sent an email to Mr. Petersen, inquiring about this delegation and being held
8 to a different standard but not equally. I also spoke to my HR Manager, but as of today, I have
9 not heard from HR.”

11 21. In a letter to Plaintiff dated July 14, 2017, the EEOC acknowledged receipt of
12 Plaintiff’s charge no. 555-2017-00504, which was dual-filed with the California Department of
13 Fair Employment and Housing (“DFEH”). Plaintiff is informed and believes, and thereupon
14 alleges, that the EEOC furnished a copy of Plaintiff’s charge no. 555-2017-00504 to Defendants
15 sometime in the summer of 2017.

17 22. In or around November 2017, and while his EEOC charge no. 555-2017-00504
18 was still pending at the EEOC, Plaintiff became aware through word of mouth that the position
19 of Director of Transportation was open, and that Defendants had recently interviewed three
20 younger, Caucasian employees for the position. Defendants had not posted the job listing
21 before interviewing for the position. Plaintiff is informed and believes, and based thereon
22 alleges, that company policy at the time required Defendants to post the open position.

24 23. Shortly after Plaintiff learned that the position was open and that Defendants were
25 already considering individuals for the position, Plaintiff contacted human resources to ask
26 about the position. The human resources representative informed Plaintiff that she was not sure
27
28

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