

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS: Equal Employment Opportunity Commission
(b) County of Residence of First Listed Plaintiff
(c) Attorney's (Firm Name, Address, and Telephone Number)
DEFENDANTS: Western Energy Services of Durango, Inc.
County of Residence of First Listed Defendant La Plata, CO
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
X 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)
PTF DEF
Citizen of This State 1 1 Incorporated or Principal Place of Business In This State 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES
110 Insurance 310 Airplane 362 Personal Injury - Med. Malpractice 610 Agriculture 422 Appeal 28 USC 158 400 State Reapportionment
120 Marine 315 Airplane Product Liability 365 Personal Injury - Product Liability 620 Other Food & Drug 423 Withdrawal 28 USC 157 410 Antitrust
130 Miller Act 320 Assault, Libel & Slander 368 Asbestos Personal Injury Product Liability 625 Drug Related Seizure of Property 21 USC 881 430 Banks and Banking
140 Negotiable Instrument 330 Federal Employers' Liability 370 Other Fraud 630 Liquor Laws 820 Copyrights 440 Commerce
150 Recovery of Overpayment & Enforcement of Judgment 340 Marine 371 Truth in Lending 640 R.R. & Truck 830 Patent 450 Commerce
151 Medicare Act 345 Marine Product Liability 380 Other Personal Property Damage 650 Airline Regs. 835 Patent 460 Deportation
152 Recovery of Defaulted Student Loans (Excl. Veterans) 350 Motor Vehicle 385 Property Damage Product Liability 660 Occupational Safety/Health 840 Trademark 470 Racketeer Influenced and Corrupt Organizations
153 Recovery of Overpayment of Veteran's Benefits 355 Motor Vehicle Product Liability 385 Property Damage Product Liability 690 Other 870 Taxes (U.S. Plaintiff or Defendant) 26 USC 7609 480 Consumer Credit
160 Stockholders' Suits 360 Other Personal Injury 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 440 Other Civil Rights 441 Antitrust
190 Other Contract 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 440 Other Civil Rights 430 Banks and Banking
195 Contract Product Liability 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 440 Other Civil Rights 450 Commerce
196 Franchise 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 440 Other Civil Rights 460 Deportation
210 Land Condemnation 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 440 Other Civil Rights 470 Racketeer Influenced and Corrupt Organizations
220 Foreclosure 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 440 Other Civil Rights 480 Consumer Credit
230 Rent Lease & Ejectment 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 440 Other Civil Rights 490 Cable/Sat TV
240 Torts to Land 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 440 Other Civil Rights 810 Selective Service
245 Tort Product Liability 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 440 Other Civil Rights 850 Securities/Commodities/Exchange
290 All Other Real Property 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 440 Other Civil Rights 875 Customer Challenge 12 USC 3410
510 Motions to Vacate Sentence 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 890 Other Statutory Actions
892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
X 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Age Discrimination in Employment Act of 1967.
Brief description of cause:
This is an action to correct unlawful employment practices on the basis of age.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE: 09/27/2011 SIGNATURE OF ATTORNEY OF RECORD: /s/ Christina Vigil

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	CIV.NO. _____
)	
v.)	
)	
WESTERN ENERGY SERVICES OF)	
DURANGO, INC.,)	
Defendant.)	
_____)	

COMPLAINT AND JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under the Age Discrimination in Employment Act to correct unlawful employment practices on the basis of age and to make whole and provide appropriate relief to Eric Camron and Dennis Thomas. As discussed in greater particularity below, Plaintiff Equal Employment Opportunity Commission (“EEOC”) alleges that in August 2009 and September 2009, Defendant Western Energy Services of Durango, Inc. (“WESODI”) refused to hire Eric Camron (“Mr. Camron”), then 72, because of his age. EEOC also alleges that in September 2009, WESODI refused to hire Dennis Thomas (“Mr. Thomas”), then 61, because of his age.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 7(b) of the Age

Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b), et seq. (the “ADEA”), which incorporates by reference Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 (the “FLSA”), as amended, 29 U.S.C. §§ 216(c) and 217.

2. The unlawful employment practices alleged below were committed within the jurisdiction of the United States Court for the District of New Mexico.

PARTIES

3. Plaintiff EEOC is the agency of the United States of America charged with the administration, interpretation and enforcement of the ADEA and is expressly authorized to bring this action by Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

4. At all relevant times, Defendant WESODI is a Colorado Corporation that has continuously been doing business in the State of New Mexico and has continuously had at least 20 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 11(b), (g) and (h) of the ADEA, 29 U.S.C. §§ 630(b), (g) and (h).

GENERAL ALLEGATIONS

6. More than thirty days prior to the institution of this lawsuit, Mr. Thomas and Mr. Camron filed charges of discrimination with the Commission alleging violations of the Age Discrimination in Employment Act by Defendant.

7. The Commission investigated Mr. Thomas' and Mr. Camron's charges of discrimination.

8. Based on evidence adduced during its investigation, the Commission issued a determination finding reasonable cause to believe Defendant engaged in certain unlawful employment practices identified in the determination.

9. The Commission's determination letter included an invitation for Defendant to join the Commission in informal methods of conciliation in an attempt to eliminate the alleged unlawful employment practices.

10. Prior to institution of this lawsuit, the Commission's representatives attempted to eliminate the unlawful employment practices alleged below and to effect voluntary compliance with the ADEA through informal methods of conciliation, conference and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

11. The Commission and Defendant were unable to reach an agreement in the conciliation process.

12. After the conciliation efforts were unsuccessful, the Commission sent notice to Defendant that conciliation failed.

13. All conditions precedent to the institution of this lawsuit have been fulfilled.

14. Eric Camron was born on February 9, 1937, and was 72 years old at the time of WESODI's refusal to hire him for employment.

15. Dennis Thomas was born on October 2, 1948, and was 61 years old at the time of WESODI's refusal to hire him for employment.

16. WESODI is a wholly owned subsidiary company of La Plata Electric Association Inc. (“La Plata”), incorporated to assist La Plata with electrical utility work in the southwest area of New Mexico.

17. WESODI is separated into two different divisions: (1) line location and (2) line construction. The line location division assists in locating underground power lines, and the line construction division provides installation and maintenance of power and telecommunication utilities.

18. WESODI employed journeyman lineman, apprentice lineman, and equipment operator positions through a referral system with IBEW.

19. WESODI’s hiring process is governed by a collective bargaining agreement which exclusively hires employees to work in the line construction division through the union referral process, including but not limited to, International Brotherhood of Electrical Workers Local Union (“IBEW”) No. 611 and No. 969.

20. When a journeyman lineman vacancy position existed, WESODI contacted the local union for the next available union member with the requested skill qualifications.

21. During the relevant time period, Jerry Holland (“Holland”) was employed as the Operations Manager for WESODI.

22. During the relevant time period, Jack Spargo (“Spargo”) was employed as the Superintendent for WESODI.

23. Around August 4, 2009, IBEW Local Union No. 611 contacted Mr. Camron for work at WESODI’s Hillsboro, New Mexico project.

24. When Mr. Camron reported to the local union hiring hall to accept his job assignment, Mr. Camron was informed by Spargo via telephone that he was not going to be hired due to his age, since there was a concern that Mr. Camron would not be able to keep up with the younger employees because the work environment was “go, go, go.”

25. Mr. Spargo refused to hire Mr. Camron for the Hillsboro project, but promised to keep Mr. Camron in mind for an upcoming WESODI project in Farmington, New Mexico.

26. WESODI employed Brandon Bibiano, a 24-year-old with less experience than Mr. Camron, for the Hillsboro, New Mexico project.

27. In September 2009, WESODI contacted IBEW Local Union No. 611 in order to obtain a qualified journeyman lineman for its Farmington, New Mexico project.

28. Mr. Camron and Mr. Thomas were the first two qualified union members on the referral list for the Farmington project.

29. On September 9, 2009, Spargo rejected Mr. Thomas for employment, despite Mr. Thomas' acceptance of the job assignment in Farmington, New Mexico. Spargo expressly told the IBEW Local Union No. 611 dispatcher that the refusal was because of Mr. Thomas' age.

30. On September 10, 2009, Spargo told the IBEW Local Union No. 611 dispatcher that Mr. Camron “was too old” and did not “want [Camron] to hurt himself or wear himself out because of the difficulty of the work.”

31. WESODI employed James Baca, a 28-year-old with less experience than Mr. Thomas and Mr. Camron, for the Farmington, New Mexico project.

32. WESODI refused to hire Mr. Camron and Mr. Thomas for projects in Hillsboro, New Mexico and Farmington, New Mexico due to their age and despite their vast work experience and work qualifications.

FIRST CLAIM FOR RELIEF

[Age Discrimination -29 U.S.C. §623(a)(1)]

33. The allegations contained in paragraphs 6 through 32 are hereby incorporated by reference.

34. The effect of the practices complained of in paragraph(s) 6 through 32 above has been to deprive Eric Camron and Dennis Thomas of equal employment opportunities and otherwise adversely affect their status as an employee because of their age, Mr. Camron, then 72 years old, and Mr. Thomas, then 61 years old.

35. Defendant hired substantially younger, lesser qualified individuals, under the age of forty (40) to work as the journeyman lineman for the Hillsboro and Farmington projects in New Mexico.

36. By its conduct complained of above, Defendant WESODI engaged in unlawful employment practices, in violation of Section 4(a)(1) of the ADEA, 29 U.S.C. § 623(a)(1), by refusing to hire Eric Camron and Dennis Thomas because of their age.

37. The unlawful employment practices complained of in paragraphs 6 through 32 above were and are willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

38. As a result of Defendant's conduct described herein, Mr. Camron and Mr. Thomas were deprived of wages and employment benefits.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant WESODI, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in conduct described above and any employment practices which discriminate on the basis of age against individuals 40 years of age and older;

B. Order Defendant WESODI to institute and carry out policies, practices and programs which provide equal employment opportunities for individuals 40 years of age and older, and which eradicate the effects of its past and present unlawful employment practices;

C. Grant a judgment requiring Defendant WESODI to pay appropriate back wages in an amount to be determined at trial, an equal sum as liquidated damages, and prejudgment interest to Eric Camron and Dennis Thomas;

D. Order Defendant WESODI to make whole Eric Camron and Dennis Thomas who were affected by the unlawful practices described above, by providing the affirmative relief necessary to eradicate the effects of its unlawful practices, including but not limited to rightful place hiring with all attendant rights and benefits, and/or front pay;

E. Grant such further relief as the Court deems necessary and proper in the public interest; and

F. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Dated: September 27, 2011

Respectfully Submitted,

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PLEASE NOTE: It is sufficient for purposes of service on the Plaintiff Equal Employment Opportunity Commission that pleadings, notices, and any other court document be served upon the Trial Attorney. Duplicate service is not required on the General Counsel or Associate General Counsel located in Washington, D.C.