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OPINION OF THE FIFTH CIRCUIT  
(MAY 3, 2019)

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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ERIC BAGGETT,

*Plaintiff-Appellant,*

v.

ONCOR ELECTRIC DELIVERY COMPANY, L.L.C.,

*Defendant-Appellee.*

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No. 18-10918

Appeal from the United States District Court  
for the Northern District of Texas No. 3:17-CV-3136

Before: SMITH, WIENER, and  
WILLETT, Circuit Judges.

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PER CURIAM\*

Eric Baggett sued his former employer under Title VII and the Age Discrimination in Employment Act (“ADEA”). On appeal, he abandons Title VII and complains only of the dismissal of his ADEA claim.

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The Equal Employment Opportunity Commission (“EEOC”) dismissed Baggett’s charge as untimely. We need not rest our decision on that alleged deficiency, however. As the district court carefully explained, “Even if the Court were to ignore the EEOC’s dismissal of the Charge as untimely, the allegations in the First Amended Complaint are insufficient to state a claim of age discrimination under the ADEA. Baggett has not sufficiently alleged two of the elements—that he was qualified for the position and that he was (i) replaced by someone outside the protected class, (ii) replaced by someone younger, or (iii) otherwise discharged because of his age.”

The district court also noted that Baggett “has already amended his pleadings once, failed to respond to the Motion to Dismiss, and did not request leave to amend [, so] allowing Baggett the opportunity to replead would be futile.” There is no reversible error in the district court’s determinations. The judgment of dismissal is **AFFIRMED**, essentially for the reasons given by the district court.

**ORDER OF THE DISTRICT COURT  
(JUNE 19, 2018)**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

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ERIC BAGGETT,

v.

ONCOR ELECTRIC DELIVERY COMPANY, LLC,

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Case No. 3:17-CV-03136-S

Before: Karen Gren SCHOLER,  
United States District Judge

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This Order addresses Defendant Oncor Electric Delivery Company, LLC's ("Oncor") Second Motion to Dismiss Plaintiff Eric Baggett's ("Baggett") First Amended Complaint [ECF No. 10]. For the reasons stated below, the Court grants the Motion.

**I. Origins of the Dispute**

Baggett is a 51-year-old male who worked for Oncor from approximately August 26, 1996, until March 29, 2017. Am. Compl. ¶ 9. Oncor hired Baggett as a meter reader, and at the time of his departure from the company, Baggett worked as a hold queue representative. *Id.* ¶ 10.

On August 14, 2017, Baggett filed a Charge of Discrimination (the “Charge”) with the Equal Opportunity Employment Commission (“EEOC”) against Oncor, alleging that Oncor discriminated against him on the basis of age in violation of the Age Discrimination in Employment Action of 1967, 29 U.S.C. § 621, *et seq.* (“ADEA”). *See* Def.’s Mot., Ex. A.<sup>1</sup> In the Charge, Baggett alleged that he was denied hire or promotion on at least three separate occasions because of his age during his employment with Oncor. *Id.* The Charge was dismissed by the EEOC due to being untimely filed. *See* Def’s Mot., Ex. B. Upon receipt of the Dismissal and Notice of Rights from the EEOC, Baggett had 90 days to file a suit based on the Charge in federal or state court. *See id.* Baggett filed his Original Complaint against Oncor on November 14, 2017, and his First Amended Complaint on January 9, 2018, bringing claims under the ADEA and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000-e, *et seq.* (“Title VII”).

In support of his ADEA claim, Baggett alleges that he “was unlawfully discriminated against based on his age and denied promotions/hiring to the positions of DSA, Designer, and Claims Adjuster within [Oncor’s] organization.” Am. Compl. ¶ 11, According to Baggett, each time he applied for the positions from approximately October 18, 2016, until February 2017, the position was given to a younger, less qualified employee and/or contractor. *Id.* Baggett claims that in

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<sup>1</sup> In his First Amended Complaint, Baggett alleges that he filed the Charge with the EEOC on July 7, 2017. Am. Compl. ¶ 5. However, the Charge was signed by Baggett on August 14, 2017 and stamped “received” by the EEOC on August 14, 2017. *See* Def’s Mot., Ex. A.

October 2016, he sent an email to upper management inquiring why he and other coworkers over the age of 50 were being denied jobs or promotions. *Id.* Baggett alleges that his concerns were never addressed. *Id.*

In support of his Title VII claim, Baggett alleges that from approximately January 2017 until March 29, 2017, Oncor unlawfully retaliated against him in the form of suspensions and subjected him to a hostile work environment. *Id.* ¶ 12. According to Baggett, in January 2017, he made a complaint to Oncor's Human Resources Department regarding his supervisor. *Id.* ¶ 13. Baggett complained that his supervisor spoke negatively to him and other employees over the age of 50, as well as required such employees to perform and complete work in an unreasonable amount of time. *Id.* Baggett avers that shortly thereafter, his supervisor began retaliating against and harassing him by giving him massive amounts of work to complete in a short period of time, as well as giving Baggett assignments which he was not properly trained to complete. *Id.* Baggett also avers that he was given written reprimands based on false reports made by his supervisor, *Id.* According to Baggett, on or about March 13, 2017, he was suspended without pay based on an allegedly false report made by his supervisor. *Id.* ¶ 14. On March 29, 2017, Baggett claims he was notified that he was being terminated based on an allegedly false report by his supervisor. *Id.*

Oncor filed its motion to dismiss pursuant to Rule 12(b)(6) on January 22, 2018, arguing that (1) the First Amended Complaint failed to state a plausible claim under Title VII and (2) Baggett failed to exhaust his administrative remedies with regard to both his Title VII and ADEA claims. Baggett never responded

to the Motion. At the March 22, 2018 status conference hearing held before the Court, Baggett indicated, through his counsel, that he would stand on his pleadings.

## II. The Rule 12(B)(6) Standard

When considering a Rule 12(b)(6) motion to dismiss, a court must determine whether the plaintiff has asserted a legally sufficient claim for relief. *Blackburn v. City of Marshall*, 42 F.3d 925, 931 (5th Cir. 1995). A viable complaint must include “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). To meet this “facial plausibility” standard, a plaintiff must “plead[ ] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A court generally accepts well-pleaded facts as true and construes the complaint in the light most favorable to the plaintiff. *Gines v. D.R. Horton, Inc.*, 699 F.3d 812, 816 (5th Cir. 2012). But a court does not accept as true “conclusory allegations, unwarranted factual inferences, or legal conclusions,” *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5th Cir. 2007). A plaintiff must provide “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (internal citations omitted). “Factual allegations must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Id.* (internal citations omitted).

In ruling on a Rule 12(b)(6) motion, a court generally limits its review to the face of the pleadings. *See Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999). However, a court may also consider documents outside of the pleadings if they fall within certain limited categories. First, a “court is permitted . . . to rely on ‘documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.’” *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008) (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)). Second, a “written document that is attached to a complaint as an exhibit is considered part of the complaint and may be considered in a 12(b)(6) dismissal proceeding.” *Ferrer*, 484 F.3d at 780. Third, a “court may consider documents attached to a motion to dismiss that ‘are referred to in the plaintiff’s complaint and are central to the plaintiff’s claim.’” *Sullivan v. Leor Energy, LLC*, 600 F.3d 542, 546 (5th Cir. 2010) (quoting *Scanlan v. Tex. A & M Univ.*, 343 F.3d 533, 536 (5th Cir. 2003)). Finally, “[i]n deciding a 12(b)(6) motion to dismiss, a court may permissibly refer to matters of public record.” *Cinel v. Connick*, 15 F.3d 1338, 1343 n.6 (5th Cir. 1994) (internal citations omitted); *see also, e.g., Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011) (stating, in upholding district court’s dismissal pursuant to Rule 12(b)(6), that “the district court took appropriate judicial notice of publicly-available documents and transcripts produced by the [Food and Drug Administration], which were matters of public record directly relevant to the issue at hand.” (internal citations omitted)).

### III. The Court Grants the Motion

#### A. Title VII Claim

Baggett alleges that Oncor violated Title VII by following a policy and practice of retaliation and harassment against him based on his complaints against his supervisor to Oncor's Human Resources Department. Am. Compl. ¶ 20. To establish a prima facie Title VII retaliation case, a plaintiff must show: (1) he was engaged in a protected activity; (2) he was subjected to an adverse employment action; and (3) there was a causal connection between the protected activity and the adverse employment action. *Hernandez v. Yellow Transp., Inc.*, 670 F.3d 644, 657 (5th Cir. 2012). Oncor argues that Baggett's Title VII claim should be dismissed because (1) Baggett fails to state a plausible claim and (2) Baggett never filed a Title VII claim with the EEOC. Def.'s Mot. ¶¶ 7-9. The Court will not address whether or not Baggett's First Amended Complaint sufficiently pleads a Title VII claim because the Court finds that Baggett failed to exhaust his administrative remedies as to his Title VII claim.

Before Baggett can pursue a Title VII claim in federal court, he must first exhaust his available administrative remedies. *See Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378-79 (5th Cir. 2002). Exhaustion occurs when an individual files a timely complaint with the EEOC, his claim is dismissed by that agency, and the agency informs him of his right to sue in federal court. 42 U.S.C. § 2000e-5(f)(1). An employee may not base a Title VII claim on an action that was not previously asserted in a formal charge of discrimination to the EEOC, or that could not be reasonably

expected to grow out of the charge of discrimination. *Filer v. Donley*, 690 F.3d 643, 647 (5th Cir. 2012). In the Charge, Baggett checked only the box for discrimination based on age and stated:

I believe that I was not hired or promoted because of my age (50) during my employment with Oncor. I believe that I have been denied hire and promotion on at least (3) separate occasions during my employment in violation of the Age Discrimination in [E]mployment Act of 1967, as amended.

Def.'s Mot., Ex. A. The allegations made in the Charge do not mention any employment action taken by Oncor or protected activity that could be interpreted as asserting a claim under Title VII. There is no mention of retaliation in the narrative of the Charge. In addition, Title VII has consistently required claimants to fill in the appropriate corresponding boxes when filing their claim for unlawful employment actions in order to exhaust their administrative remedies. *See Miller v. Sw. Bell Tel. Co.*, 51 F. App'x 928, 2002 WL 31415083, at \*6 (5th Cir. 2002).

Because Baggett has failed to exhaust his administrative remedies, his Title VII claim is dismissed with prejudice.

## **B. ADEA Claim**

Baggett alleges that Oncor followed a policy and practice of discrimination against him because of his age in violation of the ADEA. To establish a prima facie case of age discrimination under the ADEA, a plaintiff must show; (1) he is a member of a protected class; (2) he was qualified for the position he held; (3)

he was discharged; and (4) after his discharge he was replaced with a person who is not a member of the protected class. *Brown v. Bunge Corp.*, 207 F.3d 776, 781 (5th Cir. 2000). For the fourth element, a plaintiff must show that he was either (i) replaced by someone outside the protected class, (ii) replaced by someone younger, or (iii) otherwise discharged because of his age. *Id.* Oncor argues that Baggett's ADEA claim should be dismissed because the Charge was untimely filed with the EEOC, and Baggett therefore failed to exhaust his administrative remedies. Def.'s Mot. ¶ 12.

If an EEOC charge is untimely filed, a suit based upon the untimely charge should be dismissed. *Barrow v. New Orleans S.S. Ass'n*, 932 F.2d 473, 476-77 (5th Cir. 1991); *see also Jones v. Tex. Juvenile Justice Dep't.*, 646 F. App'x 374, 375-76 (5th Cir. 2016) (affirming district court's dismissal of Title VII claims where plaintiff failed to timely file a formal EEOC charge); *Benson v. Mary Kay Inc.*, No Civ. A. 3:06-CV-1911-R, 2007 WL 1719927 (N.D. Tex. June 11, 2007) (dismissing plaintiff's Title VII and ADA claims where EEOC dismissed charge filed same day as untimely). Baggett filed the Charge with the EEOC on August 14, 2017. That same day, the EEOC dismissed the Charge, indicating: "Your charge was not timely filed with the EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge." Def.'s Mot., Ex. B.

In Texas, an employee must file an EEOC charge within 300 days of the last act of alleged discrimination. 29 U.S.C. § 626(d)(1); *Julian v. City of Hous., Tex.*, 314 F.3d 721, 726 (5th Cir. 2002). In limited circumstances, the filing deadline is subject to equitable doctrines such as tolling or estoppel. *Kirkland v. Big*

*Lots Store, Inc.*, 547 F. App'x 570, 573 (5th Cir. 2013) (citing *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982)). The plaintiff has the burden of providing a sufficient factual basis for tolling the filing deadline. *Id.* (citing *Conaway v. Control Data Corp.*, 955 F.2d 358, 362 (5th Cir. 1992)). The Fifth Circuit has recognized at least three circumstances where failure to timely file may be excused under the equitable tolling doctrine: (1) a suit is pending between the parties in the incorrect forum; (2) the claimant is unaware of facts supporting her claim because the defendant intentionally concealed them; and (3) the claimant is misled by the EEOC or designated state agency about her rights. *Id.* These factors do not constitute an exhaustive list—other circumstances could justify equitable tolling. *Id.* at n.5.

The Court is unclear on how the EEOC reached its decision to dismiss Baggett's Charge as untimely filed. The Charge indicates that the latest date discrimination took place was March 29, 2017—138 days before Baggett filed the Charge with the EEOC. *See* Def.'s Mot., Ex. A. In his First Amended Complaint, Baggett alleges that he was denied jobs and promotions he applied for from approximately October 18, 2016 until February 2017—300 to about 194 days before he filed the Charge. *See* Am. Compl. ¶ 11. However, there is no indication that Baggett appealed the EEOC's dismissal of the Charge. Baggett also did not address the EEOC's dismissal of the Charge in his First Amended Complaint. Significantly, Baggett did not respond to the Motion to Dismiss and did not argue for equitable relief. Even if the Court were to ignore the EEOC's dismissal of the Charge as untimely, the allegations in the First Amended Complaint are

insufficient to state a claim of age discrimination under the ADEA. Baggett has not sufficiently alleged two of the elements—that he was qualified for the position and that he was (i) replaced by someone outside the protected class, (ii) replaced by someone younger, or (iii) otherwise discharged because of his age.

Because the EEOC dismissed Baggett’s charge as untimely and the Court finds that Baggett fails to sufficiently allege a claim of age discrimination, his ADEA claim is dismissed with prejudice.

#### **IV. Conclusion**

The Court grants Oncor’s Motion to Dismiss in its entirety. Baggett’s Title VII claim is dismissed with prejudice. Baggett’s ADEA claim is dismissed with prejudice. Baggett has already amended his pleadings once, failed to respond to the Motion to Dismiss, and did not request leave to amend from the Court. Therefore, the Court finds that allowing Baggett the opportunity to replead would be futile.

SO ORDERED.

SIGNED June 19, 2018.

/s/ Karen Gren Scholer

United States District Judge

## RELEVANT STATUTORY PROVISIONS

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### 29 U.S.C. § 626—

#### RECORDKEEPING, INVESTIGATION, AND ENFORCEMENT

**(a) Attendance of Witnesses; Investigations, Inspections, Records, and Homework Regulations**

The Equal Employment Opportunity Commission shall have the power to make investigations and require the keeping of records necessary or appropriate for the administration of this chapter in accordance with the powers and procedures provided in sections 209 and 211 of this title.

**(b) Enforcement; Prohibition of Age Discrimination Under Fair Labor Standards; Unpaid Minimum Wages and Unpaid Overtime Compensation; Liquidated Damages; Judicial Relief; Conciliation, Conference, and Persuasion**

The provisions of this chapter shall be enforced in accordance with the powers, remedies, and procedures provided in sections 211(b), 216 (except for subsection (a) thereof), and 217 of this title, and subsection (c) of this section. Any act prohibited under section 623 of this title shall be deemed to be a prohibited act under section 215 of this title. Amounts owing to a person as a result of a violation of this chapter shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 216 and 217 of this title: Provided, That liquidated damages shall be payable only in cases of willful violations of this chapter. In any action brought to enforce this chapter the court shall have jurisdiction to grant

such legal or equitable relief as may be appropriate to effectuate the purposes of this chapter, including without limitation judgments compelling employment, reinstatement or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section. Before instituting any action under this section, the Equal Employment Opportunity Commission shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this chapter through informal methods of conciliation, conference, and persuasion.

**(c) Civil Actions; Persons Aggrieved; Jurisdiction; Judicial Relief; Termination of Individual Action Upon Commencement of Action by Commission; Jury Trial**

(1) Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter: Provided, That the right of any person to bring such action shall terminate upon the commencement of an action by the Equal Employment Opportunity Commission to enforce the right of such employee under this chapter.

(2) In an action brought under paragraph (1), a person shall be entitled to a trial by jury of any issue of fact in any such action for recovery of amounts owing as a result of a violation of this chapter, regardless of whether equitable relief is sought by any party in such action.

**(d) Filing of Charge with Commission; Timeliness; Conciliation, Conference, and Persuasion; Unlawful Practice**

(1) No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission. Such a charge shall be filed—

(A) within 180 days after the alleged unlawful practice occurred; or

(B) in a case to which section 633(b) of this title applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

(2) Upon receiving such a charge, the Commission shall promptly notify all persons named in such charge as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion.

(3) For purposes of this section, an unlawful practice occurs, with respect to discrimination in compensation in violation of this chapter, when a discriminatory compensation decision or other practice is adopted, when a person becomes subject to a discriminatory compensation decision or other practice, or when a person is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid,

resulting in whole or in part from such a decision or other practice.

**(e) Reliance on Administrative Rulings; Notice of Dismissal or Termination; Civil Action After Receipt of Notice**

Section 259 of this title shall apply to actions under this chapter. If a charge filed with the Commission under this chapter is dismissed or the proceedings of the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A civil action may be brought under this section by a person defined in section 630(a) of this title against the respondent named in the charge within 90 days after the date of the receipt of such notice.

**(f) Waiver**

(1) An individual may not waive any right or claim under this chapter unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum—

- (A) the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;
- (B) the waiver specifically refers to rights or claims arising under this chapter;
- (C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

- (D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;
- (E) the individual is advised in writing to consult with an attorney prior to executing the agreement;
- (F)
  - (i) the individual is given a period of at least 21 days within which to consider the agreement; or
  - (ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;
- (G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;
- (H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—

- (i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and
  - (ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.
- (2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 623 or 633a of this title may not be considered knowing and voluntary unless at a minimum—
- (A) subparagraphs (A) through (E) of paragraph (1) have been met; and
  - (B) the individual is given a reasonable period of time within which to consider the settlement agreement.
- (3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this chapter. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.

**PLAINTIFF'S FIRST AMENDED  
ORIGINAL COMPLAINT  
(JANUARY 9, 2018)**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

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ERIC BAGGETT,

*Plaintiff,*

v.

ONCOR ELECTRIC DELIVERY COMPANY, LLC,

*Defendant.*

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Civil Action No. 3:16cv03136-M

Before: Karen Gren SCHOLER,  
United States District Judge

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TO THE HONORABLE UNITED STATES DISTRICT  
JUDGE:

COMES NOW, Eric Baggett (hereinafter “Plaintiff”), and complains of Oncor Electric Delivery Company LLC (hereinafter “Defendant”), and for cause of action would show unto the Court the following:

**I. Jurisdiction and Venue**

1. This Court has jurisdiction over the federal claims asserted herein pursuant to 28 U.S.C. §§ 1331

and 1343. In addition, Plaintiff invokes this Court's jurisdiction pursuant to the Age Discrimination in Employment Act of 1967 (hereinafter "ADEA"), 29 U.S.C. 621 et seq. and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000-et seq. (hereinafter "Title VII").

2. Venue is proper in the Northern District of Texas, Dallas Division, pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

## **II. Parties**

3. Plaintiff, Eric Baggett, is a 51-year-old male citizen of the United States and a resident of Dallas County, Texas. At all times relevant hereto, Plaintiff was an employee of Defendant. Plaintiff has been subjected to unlawful employment practices committed in Dallas County, Texas by employees and agents of the Defendant.

4. Defendant is a Delaware corporation doing business in Dallas County, Texas, and an employer within the meaning of the ADEA and Title VII. Defendant may be noticed of this lawsuit by serving CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

## **III. Exhaustion of Administrative Remedies**

5. On or about July 7, 2017, Plaintiff filed a charge of employment discrimination against Defendant with the Dallas District Office of the Equal Employment Opportunity Commission (hereinafter "EEOC") within 300 days of the last discriminatory act. Any allegations

in this action which pertain to events that occurred after 300 days of the last discriminatory act pertain to allegations of continuing violation.

6. On or about August 14, 2017, Plaintiff received a “Notice of Right to Sue” concerning the charge, entitling him to institute a civil action within 90 days of the date of receipt of said notice. This action is timely filed.

7. All conditions precedent to the filing of this action have occurred or have been fulfilled.

#### **IV. Factual Summary and Causes of Action**

8. This action is authorized and instituted pursuant to the ADEA and Title VII. This is a proceeding for legal and/or equitable relief available to secure the rights of the Plaintiff under these statutes.

9. Plaintiff is a 51-year-old male who was employed by Defendant from approximately August 26, 1996 until March 29, 2017. He is a member of the protected groups within the meaning of the ADEA, based on his age.

10. Plaintiff was hired by Defendant as a meter reader and eventually made his way up to the position of hold queue representative.

11. Plaintiff was unlawfully discriminated against based on his age and denied promotions/hiring to the positions of DSA, Designer, and Claims Adjuster within Defendant’s organization. Each time Plaintiff applied for these positions from approximately October 18, 2016 until February 2017, the position was given to a younger, less qualified employee and/or contractor. On or about October 30, 2016, Plaintiff sent an email

to upper management regarding why himself and other coworkers over the age of 50 were being denied jobs/promotions. Plaintiff's concerns were never addressed.

12. From approximately January 2017 until March 29, 2017, Plaintiff was unlawfully retaliated against in the form of suspension and subjected to a hostile work environment based on his complaint to Defendant's Human Resources Department against Plaintiff's supervisor Jonathan Gaddes, which included complaints regarding Mr. Gaddes' negative treatment of employees over the age of 50.

13. In January 2017, Plaintiff made a complaint against his supervisor Jonathan Gaddes to Defendant's Human Resources Department regarding Mr. Gaddes speaking extremely negative to Plaintiff and other employees over the age of 50, as well as requiring such employees to perform and complete work in an unreasonable amount of time. Shortly thereafter, Mr. Gaddes began retaliating against and harassing Plaintiff by giving Plaintiff massive amounts of work to complete in an extremely short period of time, as well as giving Plaintiff assignments which Plaintiff was not properly trained to complete. Plaintiff was also given written reprimands based on false reports made by Mr. Gaddes.

14. On or about March 13, 2017, Plaintiff was suspended without pay based on a false report made by Mr. Gaddes. On March 29, 2017, Plaintiff was notified that he was being terminated based on Mr. Gaddes' false report.

15. The factual allegations contained in all of the paragraphs of this Original Complaint are hereby

incorporated and re-alleged for all purposes and incorporated herein with the same force and effect as if set forth verbatim.

16. This action is authorized and instituted pursuant to the ADEA and Title VII. This is a proceeding for legal and/or equitable relief available to secure the rights of the Plaintiff under these statutes.

17. Plaintiff was 50-years old during July 2016 and March 29, 2017. He is therefore a member of the protected groups within the meaning of the ADEA.

18. Plaintiff was unlawfully discriminated against based on his age and denied promotions/hiring to the positions of DSA, Designer, and Claims Adjuster within Defendant's organization. Each time Plaintiff applied for these positions from approximately October 18, 2016 until February 2017, the position was given to a younger, less qualified employee and/or contractor. On or about October 30, 2016, Plaintiff sent an email to upper management regarding why himself and other coworkers over the age of 50 were being denied jobs/promotions. Plaintiff's concern never addressed.

19. On information and belief, the Defendant followed a policy and practice of discrimination against Plaintiff because of his age in violation of the ADEA. The discriminatory practices and policies include, but are not limited to, discriminating against Plaintiff in the terms, conditions, and privileges of employment based on his age in violation of the ADEA.

20. On information and belief, the Defendant followed a policy and practice of retaliation and harassment against Plaintiff based on Plaintiff's complaints against his supervisor Jonathan Gaddes to

Defendant's Human Resources Department in violation of Title VII.

21. Plaintiff has suffered compensatory damages as the direct result of Defendant's discrimination based on age, retaliation and harassment. Plaintiff would further show that the Defendant's conduct was done willfully and with malice and that he is entitled to liquidated and exemplary damages.

22. Defendant's conduct toward Plaintiff caused him severe emotional distress, pain and suffering and/or other nonpecuniary losses, for which Plaintiff seeks past and future compensatory damages.

23. The express purposed of Congress in enacting the ADEA were to "promote employment of older persons based on their ability rather than their age; to prohibit arbitrary age discrimination in employment;" and "to help employers and workers find ways of meeting problems arising from the impact of age on employment." *See* 29 U.S.C. § 621. Congress specifically found:

(1) . . . older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs; (2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons; (3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and

their employment problems grave . . .

*See* 29 U.S.C. § 621.

24. Plaintiff has indeed been disadvantaged in his efforts to regain employment after displacement from Defendant. Plaintiff has also suffered from long-term unemployment with resultant deterioration of skill, morale, and employer acceptability.

## **V. Damages**

25. The amount of damages which Plaintiff seeks herein exceeds the jurisdictional minimum of this Court.

26. Plaintiff seeks statutory damages, back pay, front pay and/or lost wages and benefits in the past and future, all actual monetary losses, liquidated and exemplary damages, attorney's fees, expert witness fees, costs, prejudgment and postjudgment interest and such other and further legal and equitable relief to which Plaintiff is entitled pursuant to the ADEA and Title VII.

27. Plaintiff is entitled to actual damages, including pecuniary damages, mental anguish or emotional pain and suffering, inconvenience, and loss of enjoyment of life in the past and in the future, and such other and further relief to which Plaintiff is entitled because of the actions and/or omissions complained of herein.

## **VI. Jury Demand**

28. Plaintiff respectfully requests a jury trial.

## **VII. Prayer for Relief**

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendant be cited to appear, and, that Plaintiff be awarded judgment against Defendant for statutory damages, compensatory, punitive and general damages, back pay, front pay and/or lost wages and benefits in the past and future, all actual monetary losses, liquidated damages, attorney's fees, expert witness fees, costs, prejudgment and postjudgment interest and such other and further legal and equitable relief to which Plaintiff is entitled.

Respectfully submitted,

/s/ Marshay Howard  
Howard & Associates  
State Bar Card No. 24083204  
Uptown Tower  
4144 N. Central Expressway, Suite 600  
Dallas, Texas 75204  
Telephone: (469) 458-3540  
Facsimile: (972) 308-6011  
mhoward@lawyersdemandingjustice.com  
Attorney for Plaintiff

**NOTICE OF CHARGE OF DISCRIMINATION  
(AUGUST 14, 2017)**

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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

EEOC Charge No.: 450-2017-03812

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Monica Knight  
HR Manager  
ONCOR  
1616 Woodall Rodgers Frwy  
Dallas, TX 75201

Person Filing Charge: Eric P. Baggett

THIS PERSON Claims to be Aggrieved

This is notice that a charge of employment discrimination has been filed against your organization under:

- ☐ Title VII of the Civil Rights Act (Title VII)
- ☐ The Equal Pay Act (EPA)
- ☐ The Americans with Disabilities Act (ADA)
- ☒ The Age Discrimination in Employment Act (ADEA)
- ☐ The Genetic Information Nondiscrimination Act (GINA)

The boxes checked below apply to our handling of this charge:

1. ☒ No action is required by you at this charge.
2. ☐ Please call the EEOC Representative listed below concerning the further handling of this charge.

3. ☐ Please provide by a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4. ☐ Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5. ☐ EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by  
to

If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Juan F. Munoz, Intake Supervisor  
EEOC Representative  
Dallas District Office  
207 S. Houston St.  
3rd Floor

Dallas, TX 75202  
Telephone: (214) 253-2774  
Fax: (214) 253-2720

Enclosure: ☒ Copy of Charge

Circumstances of Alleged Discrimination:

- ☐ Race
- ☐ Color
- ☐ Sex
- ☐ Religion
- ☐ National Origin
- ☒ Age
- ☐ Disability
- ☐ Retaliation
- ☐ Genetic Information
- ☐ Other

See enclosed copy of charge of discrimination.

Signature

/s/ Juan F. Munoz

Name/Title of Authorized Official

Bellinda F. McCallister  
Acting District Director

Date: August 14, 2017

**CHARGE OF DISCRIMINATION  
(AUGUST 14, 2017)**

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This form is affected by the Privacy Act of 1974.  
*See* enclosed Privacy Act Statement and other information before completing this form.

Charge Presented to: Agency(ies) Charge No(s):

☐ FEPA

☒ EEOC      450-2017-03812

State or local Agency, if any:

- Texas Workforce Commission Civil Rights Division and EEOC

Name: Mr. Eric P. Baggett

Home Phone: (972) 748-2231

Date of Birth: 1966

Street Address:

417 Fairweather Street,  
Desoto, TX 75115

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (if more than two, list under PARTICULARS below.)

Name: ONCOR

No. Employees Members: 500 or more

Phone No. (include Area Code): (214) 486-3550

Street Address:

1616 Woodall Rodgers Frwy,  
Dallas, TX 75201

Discrimination Based On:

- ☐ Race
- ☐ Color
- ☐ Sex
- ☐ Religion
- ☐ National Origin
- ☐ Retaliation
- ☒ Age
- ☐ Disability
- ☐ Genetic Information
- ☐ Other

Date(s) Discrimination took place

- Earliest: 2015
- Latest: 03-29-2017
- ☐ Continuing Action

The Particulars are:

- I believe that I was not hired or promoted because of my age-(50) during my employment with Oncor.
- I believe that I have been denied hire and promotion on at least (3) separate occasions during my employment in violation of the Age Discrimination in employment Act of 1967, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above  
is true and correct.

/s/ Eric P. Baggett  
Charging Party Signature

Date: August 14, 2017

NOTARY—When necessary for State and Local Agency  
Requirements

I swear or affirm that I have read the above  
charge and that it is true to the best of my knowledge,  
information and belief.

/s/ Eric P. Baggett  
Signature of Complainant

Subscribed and Sworn to before me this date

/s/ Juan F. Munoz