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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

APRIL McCLUNG,

PLAINTIFF,

v.

CIVIL ACTION NO.

**ALLSTATE INSURANCE
COMPANY,**

DEFENDANT.

JURY TRIAL DEMANDED

COMPLAINT

I. JURISDICTION

1. This action for injunctive relief and damages is brought pursuant to 28 U.S.C. §§ 1331, 1343(4), 1367, 2201, 2202 and 29 U.S.C. § 621. This is a suit authorized and instituted pursuant to the Age Discrimination in Employment Act, 29 U.S.C. § 621, 626(d)(1), *et seq.* (ADEA). This complaint is being filed in excess of 60 days of filing her charge of age discrimination with the EEOC as allowed by 29 U.S.C. § 626(d)(1). The jurisdiction of this Court is invoked to secure protection for and to redress the deprivation of rights and Defendant's violation of the Acts and for injunctive relief and damages.

II. PARTIES

2. Plaintiff, April McClung, (hereinafter “Plaintiff”) is a resident of Pelham, Shelby County, Alabama, and performed work for the Defendant in the counties composing the Northern District of Alabama during the events of this case. Thus pursuant to 28 U.S.C. § 1391(b), venue for this action lies in the Northern District, Southern Division.

3. Defendant Allstate Insurance Company (hereinafter “Defendant”) is a company registered and doing business in the State of Alabama and has sufficient minimum contacts with the State of Alabama that it is subject to service of process in Alabama. Defendant is an entity subject to suit under 28 U.S.C. § 1331 and 29 U.S.C. § 621(a)(2), and 29 U.S.C. § 201, *et seq.* Defendant employs at least twenty (20) persons. Therefore, this Court has personal jurisdiction over Defendant.

III. STATEMENT OF FACTS

4. Plaintiff hereby incorporates by reference each of the allegations contained in paragraphs 1-4 above.

5. Plaintiff worked for Defendant twice, for six years in the late 80s and early 90s before the office where Plaintiff worked closed.

6. Plaintiff went back to work for Defendant on September 16, 2002.

7. At the time of Plaintiff's employment on September 4, 2015, Plaintiff held the position of Claim Service Leader, supervising fourteen adjusters handling medical payment claims.

8. Throughout Plaintiff's employment, Plaintiff performed her job duties in a competent or better manner.

IV. COUNT ONE – ADEA – Age Discrimination

9. Plaintiff hereby incorporates by reference each of the allegations contained in paragraphs 1-8 above.

10. At the time of Plaintiff's termination, Plaintiff's last supervisor was Daniel Hoffman.

11. Defendant assigned Plaintiff a laptop computer.

12. Defendant also assigned Plaintiff's co-worker laptop computers to perform company business.

13. Throughout Plaintiff's employment, she had been told that employees could use their laptops for personal business and personal emails.

14. To Plaintiff's knowledge, all of her co-workers used their laptops for personal business as well.

15. Defendant never provided Plaintiff with a copy of its IT policy, nor has she ever seen one.

16. On or about September 4, 2015, Plaintiff's supervisor, Hoffman, and a manager with Human Resources Department, Stephen Macintosh called Plaintiff.

17. Hoffman told Plaintiff she was being terminated effective September 4, 2015.

18. Plaintiff asked Hoffman why and he said, "Promoting your business on the company laptop."

19. Hoffman also said something about violating IT policy.

20. Plaintiff maintained a cake making business.

21. Plaintiff did send out emails on her laptop promoting that business, but was never told there was anything wrong with doing so.

22. Sara and Eric Harris (20s/early 30s), a married couple, actively promoted their business, a fitness company, through emails sent out on their personal laptops.

23. Plaintiff, along with her co-workers, received the emails sent by Sara and Eric Harris.

24. Plaintiff knew for a fact that Hoffman knew about the promotion of this business by the Harris's, because approximately two years ago, Hoffman participated in the fitness program.

25. But for Plaintiff's age, 48, Defendant would not have terminated Plaintiff's employment, as she was not treated the same as both Sara and Eric Harris, who were substantially younger.

26. Because Defendant was impermissibly motivated by Plaintiff's age in violation of the ADEA, in terminating Plaintiff's employment, Plaintiff has been damaged, suffering loss of pay and benefits.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for the following relief:

A. Grant Plaintiff a permanent injunction enjoining the Defendant, its agents, successors, employees, attorneys and those acting in concert with the Defendant and at the Defendant's request from continuing to violate the terms of the ADEA;

B. Enter an Order requiring the Defendant to make Plaintiff whole by awarding her reinstatement to the position she would have had, had she not been terminated;

C. Award her back pay, together with employment benefits, front pay, liquidated damages; special damages; nominal damages;

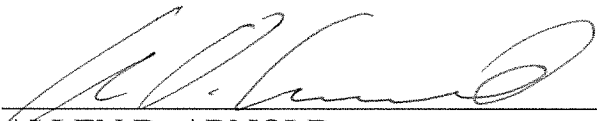
D. Attorneys' fees and costs;

E. Plaintiff requests that the Court award Plaintiff equitable relief pursuant to 28 U.S.C. § 2201 and 29 U.S.C. § 626 that the actions of Defendant are violative of the law; and,

F. Any different or additional relief as may be determined by the Court to which Plaintiff is entitled.



DAVID R. ARENDALL



ALLEN D. ARNOLD

OF COUNSEL:

ARENDALL & ARNOLD
2018 Morris Avenue, Third Floor
Birmingham, Alabama 35203
(205) 252-1550 – Office
(205) 252-1556 – Facsimile

PLAINTIFF REQUESTS TRIAL BY STRUCK JURY



OF COUNSEL

DEFENDANT'S ADDRESS:

Allstate Insurance Company
c/o Agent for Service of Process
The Corporation Company
2000 Interstate Park Drive
Montgomery, AL 36109-5421

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 U.S. District Court, N.D. OF ALABAMA of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

2016 Jan-29 PM 04:45
U.S. DISTRICT COURT
N.D. OF ALABAMA

CIVIL COVER SHEET

I (a) PLAINTIFFS APRIL McCLUNG	DEFENDANTS ALLSTATE INSURANCE COMPANY
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF SHELBY (EXCEPT IN U.S. PLAINTIFF CASES)	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY)

Attorneys for Plaintiff: Arendall & Arnold 205.252.1550 - Office 2018 Morris Avenue, Suite 300 205.252.1556 - Facsimile Birmingham, AL 35203	ATTORNEYS (IF KNOWN) Unknown at this time
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II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	(For Diversity Cases Only) Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3 Incorporated or Principal Place of Business in This State <input type="checkbox"/> 4 <input type="checkbox"/> Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/>

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

ADEA

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORT	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Manne <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Manne <input type="checkbox"/> 345 Manne Product <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 620 Agriculture <input type="checkbox"/> 620 Food & Drug <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Standards <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC (405(g)) <input type="checkbox"/> 863 DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination <input type="checkbox"/> Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY) Appeal to District

Transferred from 7 Judge from

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 another district (specify) 6 Multidistrict Litigation 7 Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ _____

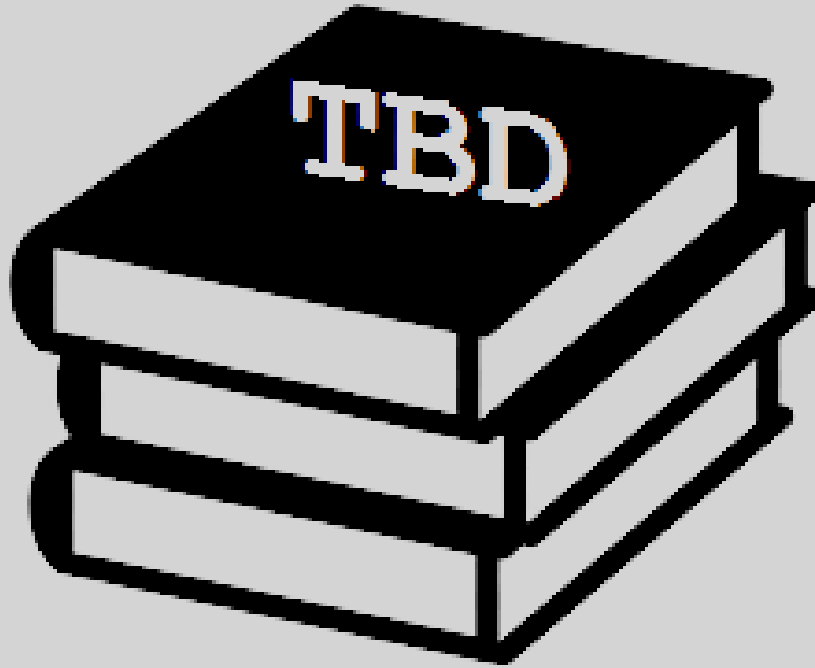
Check YES only if demanded in complaint:
JURY DEMAND: YES NO

01/27/16
DATE SIGNATURE OF ATTORNEY OF RECORD

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