

II. JURISDICTION

2. Plaintiffs have been subject to discrimination in violation of the rights guaranteed to them by the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §621 et seq.
3. Plaintiffs are over 40 years of age. They seek equitable and monetary relief under the ADEA, including reinstatement to their positions from which they were separated, back pay, and all other appropriate relief to which they are entitled under the law.
4. Plaintiffs have satisfied all conditions precedent to initiating this court action in that:
 - a. These Plaintiffs were at least 40 years of age at the time they were terminated;
 - b. The Plaintiffs timely filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC);
 - c. Defendants refused to engage in conciliation efforts;
 - d. The EEOC was not able to resolve the controversy; and
 - e. The EEOC issued a “right-to-sue” letter to Plaintiffs dated November 26, 2013, informing and advising the Plaintiffs that it was unable to resolve the controversy as described to it and that it was not prepared to take further efforts.
5. The Plaintiffs have timely filed this action in this Court following receipt of the right-to-sue letter.
6. This action also arises under the United States Constitution, particularly under the provisions of the Fourteenth Amendment to the United States Constitution; and under Federal Law, particularly 42 U.S.C. §1983 and 28 U.S.C. §1343 and §1331.
7. In addition to the foregoing, Plaintiff BOVEN has been subject to discrimination because of her gender in violation of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2 and the Equal Pay Act, 42 USCS §2000e-5(e) (3) (A).

8. Plaintiffs seek redress for violations of state law rights via supplemental jurisdiction. This Court has subject matter jurisdiction over these related state law claims under 28 U.S.C. §1367 (supplemental jurisdiction over state law claims).

III. PARTIES

9. Plaintiff JUAN ANTONIO GONZALEZ is an individual who was a tenured faculty member at the University of Texas at Brownsville (UTB) and Texas Southmost College (TSC). He resides at 663 Eastwood Drive, Brownsville (Cameron County), Texas 78521-4261.
10. Plaintiff DOROTHY BOVEN is an individual who was a tenured faculty member at UTB and TSC. She resides at 2422 Deer Trail, Brownsville (Cameron County), Brownsville, Texas 78521-2800
11. Plaintiff KAREN FUSS-SOMMER is an individual who was a tenured faculty member at UTB and TSC. She resides at 6997 Austrian Pine, Brownsville (Cameron County), Texas 78526.
12. Defendant JULIET GARCIA, In Her Official Capacity, is the President of The University of Texas at Brownsville, and may be served at her office at the University of Texas at Brownsville, 80 Fort Brown, Brownsville (Cameron County), Texas 78520.
13. Defendant ALAN F. J. ARTIBISE, In His Official Capacity, is the Provost of The University of Texas at Brownsville and may be served at his office at the University of Texas at Brownsville, 80 Fort Brown, Brownsville (Cameron County), Texas 78520.
14. Defendant UNIVERSITY OF TEXAS AT BROWNSVILLE is a political subdivision of the State of Texas and may be served with process by serving its President, JULIET GARCIA, at her office at the University of Texas at Brownsville, 80 Fort Brown, Brownsville (Cameron County), Texas 78520.

15. Defendant LILY F. TERCERO, In Her Official Capacity, is the President of Texas Southmost College and may be served at her office at Texas Southmost College, 80 Fort Brown, Brownsville (Cameron County), Texas 78520.

16. Defendant TEXAS SOUTHMOST COLLEGE is a Community College in Cameron County duly organized and existing under the laws of the State of Texas and may be served with process by serving its President, LILY F. TERCERO, at her office at the TEXAS SOUTHMOST COLLEGE , 80 Fort Brown, Brownsville (Cameron County), Texas 78520.

IV. VENUE

17. Venue for the relief requested in these claims lies in the Brownsville Division of the United States District Court for the Southern District of Texas because Plaintiffs' employment contracts were made in Cameron County, Texas; and the unconstitutional actions which were taken to violate Plaintiffs' Due Process, Equal Protection, Age Discrimination in Employment Act, and Equal Pay Act occurred in Cameron County, Texas.

V. CLAIM FOR RELIEF ONE

AGE DISCRIMINATION IN EMPLOYMENT ACT

18. Plaintiffs were granted tenure by TSC. In 1992, TSC and UTB merged and the Plaintiffs were retained by UTB as tenured faculty. Tenure denotes a status of continuing appointment as a member of the faculty at an institution of The University of Texas System pursuant to The University of Texas System Rules and Regulations of the Board of Regents (Regents Rules) 31007.

19. Defendants UTB and TSC separated on March 12, 2012 and established Committee Guidelines and the Provost's Charge where non-tenured faculty members were given priority

over tenured faculty with a master's degree. This designation is an artificial, arbitrary, and unnecessary barrier to employment.

20. Plaintiffs were not chosen for termination based on their performance in teaching, service and research as provided in Regents Rule 31002 5.2.
21. Plaintiffs' employment was not terminated for Good Cause as provided in Regents Rule 31008.
22. Plaintiffs' employment was not terminated based on a financial exigency as provided in Regents Rule 31003 2. Sec. 3.
23. Plaintiffs were terminated based on an Abandonment of an Academic Position or Program. Defendants had no bona fide academic reason to terminate Plaintiffs' employment as provided in Regents Rule 31003 2. Sec. 2.
24. Defendants' reason for terminating Plaintiffs' employment was pretextual in that Defendants retained non-tenured faculty who were younger than Plaintiffs. After the termination of Plaintiffs' employment, Plaintiffs' positions remained open and Defendants sought applicants for their positions. Neither their academic programs nor their academic positions were eliminated.
25. The Provost's charge that required non-tenured faculty be given priority over tenured faculty had a disparate impact on faculty members who are over 40 years of age. Tenure-track faculty members are typically under 40 years of age while tenured faculty are over the age of 40.
26. UTB and TSC knew or showed reckless disregard that this policy would have a disparate impact in contravention of the ADEA.

27. The Defendants' acts constituted unlawful discrimination against Plaintiffs in violation of the provisions of the ADEA.
28. A balanced work force cannot immunize UTB and TSC from liability for specific acts of discrimination.

VI. CLAIM FOR RELIEF TWO
DENIAL OF DUE PROCESS AND EQUAL PROTECTION

29. Plaintiffs, as tenured faculty, had a continuing contract and a proprietary interest in their employment with UTB and TSC. The termination of their employment was an arbitrary or capricious termination of that interest.
30. Plaintiffs' employment was not terminated for Good Cause as provided in Regents Rule 31008.
31. Plaintiffs' employment was not terminated based on a financial exigency as provided in Regents Rule 31003 2. Sec. 3.
32. Plaintiffs were terminated based on an Abandonment of an Academic Position or Program. Defendants had no bona fide academic reason to terminate Plaintiffs' employment as provided in Regents Rule 31003 2. Sec. 2.
33. Plaintiffs were not given an effective opportunity to rebut the reason given to them for the termination of their employment in that the committees appointed to hear Plaintiffs' grievances were required to use the Provost's Charge that gave priority to non-tenured faculty. Plaintiffs were not given the opportunity to respond orally before the official charged with the responsibility of making the termination decision, JULIET GARCIA, President of the University of Texas at Brownsville.

34. Pursuant to the Educational Partnership Agreement into which the institutions entered when they merged, all TSC employees employed by UTB were to be subject to all applicable Rules and Regulations of the Board of Regents of the University of Texas System.
35. After their termination, Plaintiffs were retained by TSC for a 9-month period at a reduction in pay and no tenure.
36. The termination of Plaintiffs' employment was made in violation of the Fourteenth Amendment, Due Process Clause and Equal Protection Rights.
37. As a result of the arbitrary and capricious acts of the Defendants, Plaintiffs have suffered grievous harm; including, but not limited to, substantial loss of income and loss of benefits, including loss of retirement benefits, and health and life insurance policies.
38. As a further result, Plaintiffs have suffered damage to both their professional and personal reputation due to the humiliation and harassment that accompany this type of deprivation.

VII. CLAIM FOR RELIEF THREE
EQUAL PAY ACT

39. In addition to the foregoing, Plaintiff BOVEN seeks relief under the Equal Pay Act, 42 USCS §2000e-5(e) (3) (A) and the Civil Rights Act of 1964, 42 U.S.C. §2000e-2.
40. Plaintiff BOVEN taught a fifth class for which she was not paid while male faculty members were paid for teaching a fifth class.
41. Defendants paid male employees a different wage for equal work for a job which required equal skills, effort and responsibility, and which was performed in similar working conditions.
42. As a result of the arbitrary and capricious acts of the Defendants, Plaintiff BOVEN has suffered a substantial loss of income.

VIII. JURY DEMAND

43. Plaintiffs demand a jury trial pursuant to Fed. R. Civ. Pro. 38(a) and U.S. Const. amend. VII.

IX. PRAYER

Plaintiffs request that the Court assume jurisdiction and:

44. Declare the conduct of the Defendants to be in violation of rights guaranteed to the Plaintiffs under appropriate federal law.

45. Direct the Defendants to reinstate the Plaintiffs to their previously held positions with tenure, back pay and all other benefits to which they may be entitled.

46. Award Plaintiffs costs and reasonable attorney's fees.

47. Award Plaintiffs exemplary damages against each Defendant in an amount determined by the Court to be sufficient to punish the Defendants and deter future similar conduct by the Defendants.

48. Award the Plaintiffs all other relief that is just, reasonable, and appropriate and necessary to correct the illegality and wrong done to the Plaintiffs.

Dated: February 20, 2014.

Respectfully Submitted,

TEXAS FACULTY ASSOCIATION
OFFICE OF GENERAL COUNSEL

By:

/s/ Russell Ramirez

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