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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

SEP 18 2015

Sherri R. Carter, Executive Officer/Clerk  
By Cristina Grijalva, Deputy

Attorneys for Plaintiff Franklin Tedford Kelley, Jr.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

FRANKLIN TEDFORD KELLEY, JR.,

Case No.:

BC 595043

Plaintiff,

Honorable  
Department

V.

COMPLAINT FOR DAMAGES:

EPICOR SOFTWARE CORPORATION, a  
Delaware corporation, and DOES 1-50,  
Inclusive

1. Age Discrimination  
[Government Code §12940(a)]
2. Failure to Prevent Discrimination  
[Government Code §12940(k)]
3. Wrongful Termination in  
Violation of Public Policy
4. Violation of Business &  
Professions Code §17200
5. Failure to Pay Wages  
[Labor Code §200(a)]

Defendants.

Complaint Filed:  
Trial Date:

COMES NOW Plaintiff FRANKLIN TEDFORD KELLEY, JR. ("Plaintiff" or  
"Ted") and alleges as follows:

PARTIES

1. Plaintiff was, at all times relevant to this Complaint, an individual employed by Defendant EPICOR SOFTWARE CORPORATION ("Epicor"), while residing in the State of California.
2. Defendant EPICOR SOFTWARE CORPORATION ("Epicor") is, and at all times mentioned was, a Delaware corporation qualified to do and doing business within the State

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BY FAX

1 of California, thereby manifesting sufficient contact with the State of California to establish  
2 jurisdiction.

3 3. Plaintiff contracted with Epicor to perform the services of his employment for which  
4 he was hired as a "remote employee". Thus, at all times relevant herein, Plaintiff  
5 maintained his primary place of employment at his residence located in Castaic, County of  
6 Los Angeles; he performed the majority of his job duties at his residence located in the  
7 County of Los Angeles; and he was terminated via a conference call which he received at  
8 his residence located in the County of Los Angeles. Based thereon, venue is proper in the  
9 County of Los Angeles.

10 4. Defendant Epicor employs more than 5 persons and is an employer as defined in the  
11 California Fair Employment and Housing Act ("FEHA").

12 5. Plaintiff is informed and believes and, based on that information and belief, alleges  
13 that, at various times herein mentioned, each of the defendants was the agent, either direct,  
14 ostensible or otherwise, servant, representative of employee of each of the remaining  
15 defendants and, in engaging in certain acts hereinafter alleged, was acting within the course  
16 and scope of said agency, service, representation, or employment and materially assisted  
17 the other defendants. Plaintiff is further informed and believes and, based on that  
18 information and belief, alleges that each of the defendants ratified the acts of the remaining  
19 defendants.

20 6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,  
21 associate or otherwise, of defendants sued herein as Does 1 through 50, inclusive, and  
22 therefore sues said defendants by such fictitious names. Plaintiff is informed and believes  
23 and, upon such information and belief, alleges that each of the defendants designated as a  
24 Doe is legally responsible in some manner for the events and happenings referred to herein  
25 and caused the damages proximately thereby to Plaintiff as hereinafter alleged. Plaintiff  
26 will seek leave of court to amend this complaint to show the true names and capacities of  
27 said Doe defendants when same have been ascertained.

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CASE SUMMARY

7. Private-equity backed, privately-held software company with nearly \$1 billion in annual sales terminates 57 year old, North American sales director who had a successful 12 year track record due to alleged "position elimination".

STATEMENT OF FACTS

8. In or about May 1984, Ted was hired by Epicor's predecessor company, Triad Systems Corporation (later CCI/Triad). Ted enjoyed a successful tenure with the company until 1998, when he was laid off during a company restructuring.

9. In May 2003, Ted was actively solicited to re-join CCI/Triad by the company's Senior Vice President, Automotive. Based on the advantageous offer made to Ted, as well as the promise of a vice-presidency, Ted re-joined CCI/Triad as Director, Strategic Development on or about May 15, 2003.

10. On or about January 2013, after Activant (formerly CCI/Triad) had been acquired by Epicor, and in acknowledgment of Ted's exemplary performance as Director, Strategic Development. Epicor offered Ted a promotion to Director of Business Development, Automotive, with a commensurate increase in salary and benefits. However, Epicor never fulfilled the promise of its former Senior Vice President to promote Ted to the vice-presidency level.

11. In fiscal years 2013 and 2014, Ted so excelled in his new position, exceeding his quota goals, that Epicor rewarded him with entry into the company's elite **Circle of Excellence**. Due to his significant accomplishments, Ted was further named Data Sales Manager of the year for 2013.

12. In 2013 and 2014, the structure of Ted's commission was two-tiered, comprised of a one-time ("up-front") component, wherein commission was paid at the close of a sale and a recurring component, wherein Ted received a recurring commission for both existing clients as well as new clients he introduced to the company. At the time of Ted's termination, Epicor had not finalized the 2015 commission structure for Ted, although the majority of sales executives had received their compensation plans months earlier.

1 13. In March 2014, due to a company reorganization, Ted began reporting to Scott  
2 Roush ("Roush"). Within a few short months, Roush initiated a deliberate and contrived  
3 campaign to isolate Ted from the same accounts he had brilliantly managed in 2013 in an  
4 attempt to force Ted – an older, highly paid, long-term employee – to resign.

5 14. The sequence of events initiated and perpetuated by Epicor's management  
6 employee, Roush, depicts a clear picture of intimidation and coercion which, when  
7 unsuccessful in forcing Ted to quit, resulted in the pretextual "elimination" of his position.

8 15. Between March and September 2014, Roush obstructed Ted's ability to obtain  
9 commission payment on two of his long-term accounts to the extent that no payment was  
10 made until Ted sought the assistance of his former supervisor who facilitated payment.

11 16. In October 2014, Roush raised Ted's 2015 quota to \$1 million, more than three  
12 times his 2014 quota and a more significant increase in quota than any of Roush's other  
13 direct reports and, thereafter, **again** raised Ted's 2015 quota, this time to \$1.4 million.

14 17. In October 2014, Roush eviscerated Ted's compensation by cancelling his recurring  
15 commissions and, as many of Ted's customer relationships were "legacy" accounts, Ted  
16 experienced a critical decrease in his income. Roush's unprecedented move not only  
17 handicapped Ted's earning power, but it conveniently jeopardized Ted's ability to achieve  
18 the \$1 million - \$1.4 million quota Roush had arbitrarily established for 2015.

19 18. Before Roush's precipitous action, Ted's total commission for the calendar year  
20 2014 to date, both one-time and recurring, was **\$90,521.07**.

21 19. In an attempt to mask the true intent of his actions, Roush promised Ted that he  
22 would provide him a list of non-platform distribution leads in order to maximize Ted's  
23 potential for procuring new and income-producing non-recurring accounts, but reneged on  
24 his promise and **never** provided Ted the promised list.

25 20. In February 2015, Roush escalated his campaign to oust Ted with a series of actions  
26 that were devastating to Ted's standing with the company:

- 27 • Roush assigned new employee Todd Wilson, a sales representative in Ted's  
28 division, non-legacy accounts with significant potential for new sales opportunities.

1 Plaintiff is informed and believes and, based on that information and belief, alleges  
2 that at the time of his hiring, Todd Wilson was in his early 30's with a base pay of  
3 \$40,000. Ted's base pay at the time of his promotion to Director in 2013 and until  
4 his position was "eliminated" was \$125,000;

- 5 • Roush initiated the transfer of all vendor contracts previously handled by Ted to  
6 other sales representatives in the division;
- 7 • Roush reassigned Ted's account management role duties relating to one of his  
8 largest accounts, Firestone, to Jeff Lilly who, Plaintiff is informed and believes and,  
9 based on that information and belief, alleges was in his mid-40's at the time with a  
10 base salary in the \$60,000 range;
- 11 • Roush provided another new employee, Ken Marshall, a package of non-legacy  
12 accounts with significant potential for new product acquisition and new  
13 opportunities – similar to what Roush promised Ted and never provided. Plaintiff is  
14 informed and believes and, based on that information and belief, alleges that Ken  
15 Marshall was in his late-30's-early-40's at the time with a base salary tens of  
16 thousands of dollars less than Ted's;
- 17 • Roush reassigned Ted's account management role duties relating to another of his  
18 largest accounts, Goodyear, to Jeff Lilly.

19 21. Roush's campaign continued into March 2015 with similarly devious actions  
20 manufactured to force Ted to resign so Epicor could hire younger employees to whom it  
21 would pay a fraction of what it was contractually obligated to pay Ted.

- 22 • Roush reassigned Ted's potential eCommerce deals to Todd Wilson;
- 23 • Roush refused to allow Ted to attend a meeting pertaining to one of **Ted's own**  
24 **accounts** because he did not see any value in Ted attending even though, before  
25 Roush's tenure, Ted would have always attended such a meeting;
- 26 • Roush refused to include Ted in any communications with Ted's previously very  
27 profitable Autozone account;
- 28 • Roush refused to give Ted access to call on Epicor's eBay and Amazon accounts;

1 • Roush reassigned Ted's account management role duties relating to his major Sears  
2 account to Jeff Lilly.

3 22. On April 2, 2015, in a conference call with Roush and HR representative Paula  
4 Bifano, Ted was terminated for the disingenuous reason that his position had been  
5 eliminated.

6 23. Ted was not fired for the pretextual reason that his job had been eliminated, but  
7 because Epicor and Roush engaged in an orchestrated campaign to eviscerate Ted's  
8 position to the point he would have no job duties and earn no income. Epicor did not  
9 engage in a company-wide reorganization; it engaged in a manipulated scheme to divest  
10 itself of an older, highly paid employee.

11 24. Epicor paid Ted the base salary due him at termination on April 3, 2015.

12 25. Epicor refused, and continues to refuse, to pay Ted the full amount of commissions  
13 due him on several accounts Ted owned for calendar years 2014 and 2015 which remain  
14 due and owing in an amount that is currently unascertainable as all customer information  
15 relating to these accounts is in the sole possession of Defendant.

16 26. On or about May 12, 2015, Plaintiff filed a complaint with the Department of Fair  
17 Employment and Housing against Defendant Epicor.

18 27. On or about May 12, 2015, DFEH issued a Right to Sue Letter to Plaintiff, a true  
19 and correct copy of which is attached hereto as **Exhibit 1** and incorporated herein by  
20 reference.

21 **FIRST CAUSE OF ACTION**

22 **(For Age Discrimination Against Defendant Epicor and Does 1-50, inclusive)**

23 28. Plaintiff realleges and incorporates herein by reference all of the allegations set  
24 forth in paragraphs 1 through 26 as though fully set forth herein.

25 29. This cause of action is brought pursuant to California Government Code §12940(a)  
26 which prohibits discrimination against a person in terms, conditions or privileges of  
27 employment on the basis of age, and the corresponding regulations of the California Fair  
28 Employment and Housing Commission, or its successor.

1 30. At all times herein mentioned, Defendant Epicor employed five or more persons,  
2 bringing said Defendant employer within the provision of California Government Code  
3 §12900 et seq., prohibiting employers or their agents from discriminating against  
4 employees on the basis of age.

5 31. Plaintiff is a member of a protected class within the meaning of the aforementioned  
6 Government Code sections. At all relevant times herein, Plaintiff satisfactorily performed  
7 his duties and responsibilities as expected by Defendant and, in fact, exceeded those  
8 expectations by his performance.

9 32. Plaintiff alleges Defendant Epicor wrongfully retaliated against him, discriminated  
10 against him, and terminated him on the basis of his age.

11 33. As a proximate result of Defendant's discriminatory conduct, Plaintiff has sustained  
12 and continues to sustain substantial loss in past, present and future earnings, career  
13 opportunities, bonuses and other employment benefits in amounts to be proven at trial.  
14 Plaintiff's damages include all consequential, general and special economic damages in  
15 amounts to be proven at trial.

16 34. As a further proximate result of Defendant's discriminatory conduct, Plaintiff has  
17 suffered and continues to suffer humiliation, severe emotional distress and mental and  
18 physical pain and anguish, all to his damage in a sum according to proof.

19 35. The foregoing acts of Defendant were oppressive, malicious, and despicable, and  
20 Plaintiff is, therefore, entitled to an award of punitive damages against Defendant in an  
21 amount to be proven at trial.

22 **SECOND CAUSE OF ACTION**

23 **(For Failure to Prevent Discrimination Against Defendants**

24 **Epicor and Does 1-50, inclusive)**

25 36. Plaintiff realleges and incorporates herein by reference all of the allegations set  
26 forth in paragraphs 1 through 34 as though fully set forth herein.

27 37. Defendant Epicor had a statutory duty, pursuant to California Government Code  
28 §12940(k) to take all reasonable steps necessary to prevent discrimination from occurring

1 in the workplace.

2 38. Defendant Epicor breached its statutory duty of care to Plaintiff by failing to take all  
3 reasonable steps necessary to prevent the discrimination experienced by Plaintiff,  
4 ultimately resulting in his wrongful termination.

5 39. As a proximate result of Defendant's discriminatory conduct, Plaintiff has sustained  
6 and continues to sustain substantial loss in past, present and future earnings, career  
7 opportunities, bonuses and other employment benefits in amounts to be proven at trial.  
8 Plaintiff's damages include all consequential, general and special economic damages in  
9 amounts to be proven at trial.

10 40. As a further proximate result of Defendant's discriminatory conduct, Plaintiff has  
11 suffered and continues to suffer humiliation, severe emotional distress and mental and  
12 physical pain and anguish, all to his damage in a sum according to proof.

13 41. The foregoing acts of Defendant were oppressive, malicious, and despicable, and  
14 Plaintiff is, therefore, entitled to an award of punitive damages against Defendant in an  
15 amount to be proven at trial.

16 **THIRD CAUSE OF ACTION**

17 **(For Wrongful Termination in Violation of Public Policy Against**  
18 **Defendants Epicor and Does 1-50, inclusive)**

19 42. Plaintiff realleges and incorporates herein by reference all of the allegations set  
20 forth in paragraphs 1 through 40 as though fully set forth herein.

21 43. On April 2, 2015, Plaintiff was 57 years of age.

22 44. At all times herein mentioned, there existed fundamental and established California  
23 public policies, as codified by case law and statute, including but not limited to: (a)  
24 California Government Code §12940(a); (b) California Government Code §12940(k); (c)  
25 Labor Code §200 *et. seq.*; and (d) prohibitions against an employer terminating an  
26 employee to avoid paying wages.

27 45. On or about April 2, 2015, Defendant Epicor violated California public policies by  
28 wrongfully terminating Plaintiff on the basis of his age; by failing to prevent discrimination



1 toward Plaintiff and by terminating Plaintiff in order to avoid paying him commissions  
2 owed.

3 46. As a proximate result of Defendant's wrongful termination in violation of public  
4 policy of the State of California, Plaintiff has sustained and continues to sustain substantial  
5 loss in past, present and future earnings, career opportunities, bonuses and other  
6 employment benefits in amounts to be proven at trial. Plaintiff's damages include all  
7 consequential, general and special economic damages in amounts to be proven at trial.

8 47. As a further proximate result of Defendant's wrongful conduct, Plaintiff has  
9 suffered and continues to suffer humiliation, severe emotional distress and mental and  
10 physical pain and anguish, all to her damage in a sum according to proof.

11 48. The foregoing acts of Defendant were oppressive, malicious, and despicable, and  
12 Plaintiff is, therefore, entitled to an award of punitive damages against Defendant in an  
13 amount to be proven at trial.

14 **FOURTH CAUSE OF ACTION**

15 **(For Violation of Business & Professions Code §17200 Against**  
16 **Defendants Epicor and Does 1-50, inclusive)**

17 49. Plaintiff realleges and incorporates herein by reference all of the allegations set  
18 forth in paragraphs 1 through 47 as though fully set forth herein.

19 50. Plaintiff is informed and believes and, based on that information and belief, alleges  
20 that Defendant Epicor created, devised, developed, supervised and approved employment  
21 practices and protocols which directly impacted Plaintiff's employment.

22 51. Plaintiff is informed and believes and, based on that information and belief, alleges  
23 that by implementing policies and protocols which are discriminatory and in direct  
24 contravention of public policy, Epicor intended to reduce its overhead and maximize its  
25 profits.

26 52. Plaintiff relied upon, by accepting and continuing his employment with Epicor,  
27 Defendant's representations that it did not mandate or approve discriminatory policies in  
28 hiring and retaining its employees, including but not limited to discrimination based on age.

1 However, as described herein, Plaintiff was subjected, to his detriment, to discriminatory  
2 policies implemented and executed by Defendant.

3 53. Defendant Epicor, by the conduct described herein, has engaged in an unfair and  
4 fraudulent business practice within the meaning of Business & Professions Code §17200.

5 54. Epicor's employment policies and protocols, as implemented and described herein,  
6 resulted in the unjustifiable and abrupt termination of Plaintiff's employment, for which he  
7 incurred, and continues to incur, monetary loss in earnings and employment benefits.

8 55. As a direct and proximate result of Defendant Epicor's conduct, Plaintiff is entitled  
9 to restitution.

10 **FIFTH CAUSE OF ACTION**

11 **(For Failure to Pay Wages Against Defendants Epicor and Does 1-50, inclusive)**

12 56. Plaintiff realleges and incorporates herein by reference all of the allegations set  
13 forth in paragraphs 1 through 54 as though fully set forth herein.

14 57. California Labor Code §200(a) defines wages as "all amounts for labor performed  
15 by employees of every description, whether the amount is fixed or ascertained by the  
16 standard of time, task, commission basis or other method of calculation".

17 58. California Labor Code §201 requires that "If an employer discharges an employee,  
18 the wages earned and unpaid at the time of discharge are due and payable immediately" and  
19 within a reasonable time, "...provided, however, that the reasonable time shall not exceed  
20 72 hours".

21 59. Plaintiff was terminated on April 2, 2015.

22 60. At the time of Plaintiff's termination on April 2, 2015, he was owed and was  
23 entitled to commission payments on transactions for which he was credited for the calendar  
24 years 2014 and 2015 which remain unpaid as of the date of this Complaint.

25 61. Defendant violated California Labor Code §200 et. seq. by failing to pay Plaintiff  
26 his earned commissions within 72 hours of his termination.

27 62. As a proximate result of Defendant's failure to pay the above wages, Plaintiff has  
28 suffered damages in amounts to be proven at trial.

1 63. As a further proximate result of Defendant's failure to pay the above wages,  
2 Plaintiff is entitled to recover his attorneys' fees and costs under Labor Code §218.5,  
3 prejudgment interest under Labor Code §218.6 and waiting time penalties equal to thirty  
4 days' pay pursuant to Labor Code §203.

5 **DEMAND FOR TRIAL BY JURY**

6 Plaintiff hereby demands a trial by jury.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff FRANKLIN TEDFORD KELLEY, JR. prays for judgment  
9 as follows:

10 FOR THE FIRST THROUGH THIRD CAUSES OF ACTION:

- 11 1. Compensatory damages, including loss of wages (front and back pay), career  
12 opportunities, benefits and other opportunities of employment;
- 13 2. Special damages in a sum to be proven at trial;
- 14 3. Punitive damages in a sum to be proven at trial;
- 15 4. Interest, including pre-judgment interest, thereon at the legal rate, including but  
16 not limited to Civil Code §3291;
- 17 5. Attorney's fees according to proof, pursuant to California Government Code  
18 §12965, or other applicable statutes or contracts;
- 19 6. Costs of suit incurred herein; and
- 20 7. Such other and further relief as to the Court may seem just and proper.

21 FOR THE FOURTH CAUSE OF ACTION:

- 22 1. Restitution according to proof;
- 23 2. Costs of suit incurred herein; and
- 24 3. Such other and further relief as the Court deems just and proper

25 FOR THE FIFTH CAUSE OF ACTION:

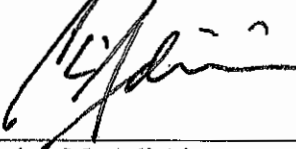
- 26 1. Damages in a sum to be proven at trial;
- 27 2. Interest, including pre-judgment interest, thereon at the legal rate, including but  
28 not limited to Labor Code §218.6;

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- 3. Attorney's fees according to proof, pursuant to Labor Code §218.5;
- 4. Waiting time penalties pursuant to Labor Code §203;
- 5. Costs of suit incurred herein; and
- 6. Such other and further relief as to the Court may seem just and proper.

Dated: 9/18/15

ADISHIAN LAW GROUP, P.C.

By: 

\_\_\_\_\_  
Christopher M. Adishian  
Attorney for Plaintiff  
Franklin Tedford Kelley, Jr.