

Lee F. Bantle (LB-7036)  
Amos B. Blackman (AB-7624)  
BANTLE & LEVY LLP  
817 Broadway  
New York, New York 10003  
212.228.9666  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
US DISTRICT COURT E.D.N.Y.  
★ OCT 27 2011 ★  
BROOKLYN OFFICE

----- X  
JAMES E. CORRIGAN,

Plaintiff,

- against -

ST. FRANCIS COLLEGE and TIMOTHY  
HOULIHAN,

Defendants.  
----- X

CV 1.1 - 5235  
Civ. 1  
COMPLAINT AND JURY DEMAND  
RIZARRY, J.  
REYES, M.

SUMMONS ISSUED

Plaintiff James E. Corrigan, by his attorneys, Bantle & Levy LLP, allege for his complaint against defendants as follows:

**NATURE OF THE ACTION**

1. This is an action for employment discrimination based on age and for retaliation, in violation of Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621 et seq. (the "ADEA"), and the New York City Administrative Code § 8-101 et seq., (the "Administrative Code"). Plaintiff seeks declaratory and injunctive relief and damages.

**JURISDICTION AND VENUE**

2. The jurisdiction of this Court is invoked pursuant to 29 U.S.C. § 621 et seq., as amended, and 28 U.S.C. §§ 1331, 1343(a)(3) and (4). In addition, plaintiff asserts

Administrative Code claims under this Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a). A substantial part of the unlawful acts and discriminatory practices alleged herein were committed within the district of the United States District Court, Eastern District of New York, and venue is properly lodged in this Court pursuant to 28 U.S.C. § 1391(b).

3. With regard to claims arising under the ADEA, all conditions precedent to jurisdiction under 29 U.S.C. § 626, have occurred or been complied with:

- a. A charge of employment discrimination on the basis of age and retaliation was filed by plaintiff James E. Corrigan, Ph.D., with the Equal Employment Opportunity Commission ("EEOC") within 300 days of the adverse actions of which Dr. Corrigan complains in this action.
- b. Following an investigation, the EEOC found "reasonable cause" to believe that Defendant discriminated against Plaintiff in violation of the ADEA. The EEOC Determination is attached hereto as **Exhibit A**.
- c. A notification of right to sue was issued by the EEOC to Dr. Corrigan.
- d. This complaint has been filed within 90 days of Dr. Corrigan's receipt of the EEOC's notification of right to sue.

#### **PARTIES**

4. Plaintiff James E. Corrigan, Ph.D., is a citizen of the United States and currently resides at 419 62<sup>nd</sup> Street, Brooklyn, New York, 11220.

5. Dr. Corrigan was born on October 18, 1938, and was 68 years old in March 2007.

6. Upon information and belief, defendant St. Francis College ("St. Francis" or the "College") is a not-for-profit corporation, organized and existing under New York law,

with its principal offices at 180 Remsen Street, Brooklyn Heights, New York, 11201.

7. At all times relevant to this complaint, St. Francis College has been an employer engaged in industry affecting commerce within the meaning of 29 U.S.C. § 630(b), (g) and (h).

8. St. Francis College is also a person within the meaning of New York City Administrative Code § 8-102(1), and an employer within the meaning of New York City Administrative Code § 8-102(5) and § 8-107.

9. Defendant Timothy Houlihan ("Dean Houlihan") is a person within the meaning of New York City Administrative Code § 8-102(1) and (5).

#### **STATEMENT OF FACTS**

10. Plaintiff James E. Corrigan, Ph.D., has been a tenured professor in the biology department at St. Francis College since 1972 with a long and distinguished record of service. He is the most senior member of the College's Biology Department and was Department Chair from 1980 to 1985 and again from 1997 to 1999.

11. Defendant St. Francis College, through its agents and employees, including Defendant Timothy Houlihan, its Academic Dean, Vice President of Academic Affairs and Provost, has taken a series of unjustified adverse employment actions against Dr. Corrigan.

12. In March 2007, Frank Macchiarola, President of the College, urged Dr. Corrigan to retire in exchange for an retirement package. After considering the offer carefully, Dr. Corrigan declined, explaining that he believed his age to be no impediment to his teaching and research duties.

13. Within a month of Dr. Corrigan's refusal to retire, St. Francis took the unprecedented steps of denying Dr. Corrigan privileges to which he had long been entitled:

rescinding permission for Dr. Corrigan to teach as an adjunct professor at Long Island University ("LIU"), where he had been teaching a course each semester since 1993, and revoking Dr. Corrigan's laboratory access.

14. Under his contract with St. Francis, Dr. Corrigan could not teach at LIU without permission of the College. At the time Dean Houlihan informed him that such permission would not be granted in Fall 2007, Dr. Corrigan had previously been granted permission to teach at LIU as an adjunct professor every semester he requested it since 1993.

15. Dr. Corrigan asked for an explanation regarding why he was denied permission to teach at LIU, and was told that the denial was "reciprocal" of an LIU policy denying its professors permission to teach at St. Francis.

16. In fact, a number of tenured LIU professors were then teaching and continue to teach as adjunct professors at St. Francis with the permission of LIU.

17. St. Francis further informed Dr. Corrigan that he was being denied laboratory privileges as a result of the expense the College incurred cleaning his laboratory.

18. In fact, St. Francis had cleaned Dr. Corrigan's laboratory nine months earlier, and Dr. Corrigan had maintained his laboratory privileges at the time, including during the Fall 2006 and Spring 2007 semesters. Only after Dr. Corrigan refused to retire did St. Francis revoke his laboratory privileges.

19. As a result of being locked out of his laboratory, algal cultures Dr. Corrigan had been maintaining for 35 years died, permanently foreclosing much of Dr. Corrigan's continued research in his specialty.

20. In addition, in Spring 2008, St. Francis assigned Dr. Corrigan to teach an introductory biology course from 6:00 to 9:00 p.m. on Tuesday evenings, despite the fact that Dr.

Corrigan also taught a course at 8:00 a.m. on Wednesday mornings. Previously, Dr. Corrigan had not been assigned to teach an evening course since 1986, and no other biology faculty have been asked to teach back-to-back late evening and early morning courses. St. Francis has continued to assign Dr. Corrigan to this onerous schedule each semester since.

21. Dr. Corrigan refused to be coerced into retiring on account of his age, despite the impact these measures had on his teaching, research, financial circumstances, health and well-being.

22. In May 2008, through his attorney, Dr. Corrigan notified St. Francis and Dean Houlihan that he believed these actions intended to force him out of St. Francis due to his age. Through his attorney, Dr. Corrigan again requested that St. Francis grant him permission to teach at LIU and reinstate his laboratory privileges.

23. On August 13, 2008, Dr. Corrigan filed an EEOC Charge, number 520-2008-04673, alleging age discrimination and retaliation based on the above-described actions taken by St. Francis and Dean Houlihan following Dr. Corrigan's decision not to accept St. Francis's age-based retirement incentive and his communications, including those through his attorney, alleging that these actions were motivated by age bias.

24. At the time, Dr. Corrigan had been giving periodic off-campus guest lectures and seminars for over fifteen years, including at the request of President Macchiarola. The extent of his compensation for these activities was a \$250 honorarium from LIU in April 2008, which he donated to his daughter's memorial scholarship fund at St. Francis.

25. In September 2008, Dean Houlihan threatened to find Dr. Corrigan in violation of his contract for engaging in any such "professional duties" outside those assigned by the College.

26. In October 2008, St. Francis responded to Dr. Corrigan's EEOC Charge with a position statement in which it reiterated its position that Dr. Corrigan was denied permission to teach at LIU solely in response to LIU adopting a similar policy denying its professors permission to teach at St. Francis. It further stated that the policy affected Dean Houlihan in addition to Dr. Corrigan. It also reiterated its position that Dr. Corrigan lost his laboratory privileges due to the expense the College incurred cleaning his laboratory.

27. Upon information and belief, Dean Houlihan had previously decided not to continue to teach as an adjunct professor at LIU as a result of his appointment as Academic Dean, and had not sought, nor been denied, permission to teach at LIU following his appointment.

28. Throughout the EEOC investigation, Dr. Corrigan repeatedly requested through his attorney that St. Francis grant him permission to teach at LIU, reinstate his laboratory privileges, and reassign the late evening course to another professor.

29. In February 2011, following a lengthy investigation, the EEOC issued a determination on the merits of Dr. Corrigan's charge and found that there was reasonable cause to believe that St. Francis had discriminated against Dr. Corrigan on account of his age.

30. In particular, the EEOC's investigation revealed that LIU's policy, which St. Francis cited as prompting its decision to deny Dr. Corrigan permission to teach at LIU, was not an outright ban, and contained exceptions under which LIU faculty could—and did—teach at St. Francis. It found that St. Francis was aware of these exceptions, and nonetheless prohibited Dr. Corrigan from teaching at LIU. It also found that Dean Houlihan had stopped teaching at LIU prior to its implementation of this "policy," and that Dr. Corrigan was the only St. Francis faculty member impacted by it.

31. In addition, the EEOC found that St. Francis had provided no explanation as to why it only revoked Dr. Corrigan's laboratory privileges after he refused to retire, when it had permitted him to use the laboratory for nine months following the cleaning it cited as the only reason for revoking those privileges.

32. Finally, the EEOC found that within the biology department, only Dr. Corrigan was asked to teach a late evening class immediately followed by an early morning class. Only two other biology professors were asked to teach evening classes, and neither had early morning classes the following day. In addition, the EEOC found that all of the full-time professors and some or all of the adjunct professors in the department could have taught the late evening course assigned to Dr. Corrigan.

33. The EEOC concluded that none of the reasons St. Francis provided as a basis for its actions against Dr. Corrigan withstood scrutiny.

34. Following the EEOC's determination, Dr. Corrigan again requested through his attorney that St. Francis grant him permission to teach at LIU, reinstate his laboratory privileges, and reassign the late evening course to another professor.

35. Each semester since St. Francis initially denied Dr. Corrigan permission to teach at LIU, rescinded his laboratory privileges, and, starting in Spring 2008, assigned him to teach a late evening course immediately before an early morning one, St. Francis has again denied Dr. Corrigan permission to teach at LIU, refused to reinstate Dr. Corrigan's laboratory privileges, and assigned him to teach a late evening course immediately before an early morning one.

36. The reasons St. Francis and Dean Houlihan have given to justify their actions, including its denial of permission for Dr. Corrigan to teach at LIU, are pretextual.

37. St. Francis's course of actions against Dr. Corrigan described herein were motivated by age bias and retaliatory animus against Dr. Corrigan.

38. As a consequence of these actions, Dr. Corrigan has lost the compensation that he would have received from LIU for eleven (11) semesters of teaching and the opportunity to continue existing and initiate new research in his field.

39. As a result of defendants' discriminatory and retaliatory treatment of Dr. Corrigan, Dr. Corrigan has sustained serious pain and suffering, severe mental and emotional harm and distress, and significant damage to his reputation.

40. These acts and conduct by St. Francis, its agents and employees, including Dean Houlihan, were performed willfully, intentionally, maliciously and with reckless indifference to Dr. Corrigan's protected rights.

41. In acting as described above, Timothy Houlihan aided, abetted, incited, compelled and coerced acts forbidden under the NYC Administrative Code § 8-101 et seq.

### COUNT I

42. Plaintiff repeats and realleges each and every allegation made in paragraphs numbered 1 through 42 as if fully set forth herein.

43. As a result of defendant St. Francis College's aforesaid acts, St. Francis College has discriminated against plaintiff James Corrigan on account of his age in violation of the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621 et seq.

44. As a result of defendants' discriminatory and adverse acts, plaintiff has suffered damage, including, without limitation, deprivation of income and benefits, loss of employment opportunities, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life and damage to reputation and career.



## COUNT II

45. Plaintiff repeats and realleges each and every allegation made in paragraphs numbered 1 through 42 as if fully set forth herein.

46. As a result of defendant St. Francis College's aforesaid acts, St. Francis College has discriminated against plaintiff James Corrigan on account of his age in violation of the New York City Administrative Code § 8-107.

47. As a result of defendants' discriminatory and adverse acts, plaintiff has suffered damage, including, without limitation, deprivation of income and benefits, loss of employment opportunities, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life and damage to reputation and career.

## COUNT III

48. Plaintiff repeats and realleges each and every allegation made in paragraphs numbered 1 through 42 as if fully set forth herein.

49. In communicating to St. Francis that its actions were improperly motivated by age, including those communications through counsel and through his EEOC Charge, plaintiff James Corrigan engaged in protected activity.

50. Through defendant St. Francis College's aforesaid acts, St. Francis College has retaliated against plaintiff James Corrigan on account of his protected activity in violation of the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621 et seq.

51. As a result of defendants' discriminatory and adverse acts, plaintiff has suffered damage, including, without limitation, deprivation of income and benefits, loss of employment opportunities, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life and damage to reputation and career.

#### COUNT IV

52. Plaintiff repeats and realleges each and every allegation made in paragraphs numbered 1 through 42 as if fully set forth herein.

53. In communicating to St. Francis that its actions were improperly motivated by age, including those communications through counsel and through his EEOC Charge, plaintiff James Corrigan engaged in protected activity.

54. Through defendant St. Francis College's aforesaid acts, St. Francis College has retaliated against plaintiff James Corrigan on account of his protected activity in violation of the New York City Administrative Code § 8-107.

55. As a result of defendants' discriminatory and adverse acts, plaintiff has suffered damage, including, without limitation, deprivation of income and benefits, loss of employment opportunities, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life and damage to reputation and career.

#### COUNT V

56. Plaintiff repeats and realleges each and every allegation made in paragraphs 1 through 42 as if fully set forth herein.

57. As a result of the foregoing, defendant Timothy Houlihan aided, abetted, incited, compelled and coerced acts forbidden under New York City Human Rights Law, Administrative Code § 8-101 et seq., in violation of New York City Administrative Code § 8-107(6). Specifically, Houlihan discriminated against plaintiff based on account of his age and retaliated against plaintiff's protected activities.

58. As a result of defendants' discriminatory and adverse acts, plaintiff has suffered damage, including, without limitation, deprivation of income and benefits, loss of

employment opportunities, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life and damage to reputation and career.

**WHEREFORE**, Plaintiff respectfully requests that this court grant judgment for Plaintiff and that it order and award plaintiff the following relief against defendants:

(1) A declaratory judgment that the acts, policies, practices, and procedures complained of herein violated Plaintiff's rights as secured by the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621 et seq. and the New York City Administrative Code, § 8-101 et seq.;

(2) An injunction restraining and enjoining defendants from engaging in further discriminatory and retaliatory acts;

(3) Damages in the form of (a) back-pay with interest based on Plaintiff's appropriate lost income had he not been discriminated and retaliated against; (b) front-pay; and (c) reimbursement for lost opportunities and other benefits, in an amount to be shown at trial;

(4) Compensatory damages for emotional pain and suffering, inconvenience, mental anguish, humiliation, and loss of reputation in an amount not less than \$500,000;

(5) Punitive damages in an amount not less than \$500,000;

(6) Attorneys fees;

(7) Costs and disbursements;

(8) Interest; and

(9) Such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiffs hereby demands trial by jury.

Dated:

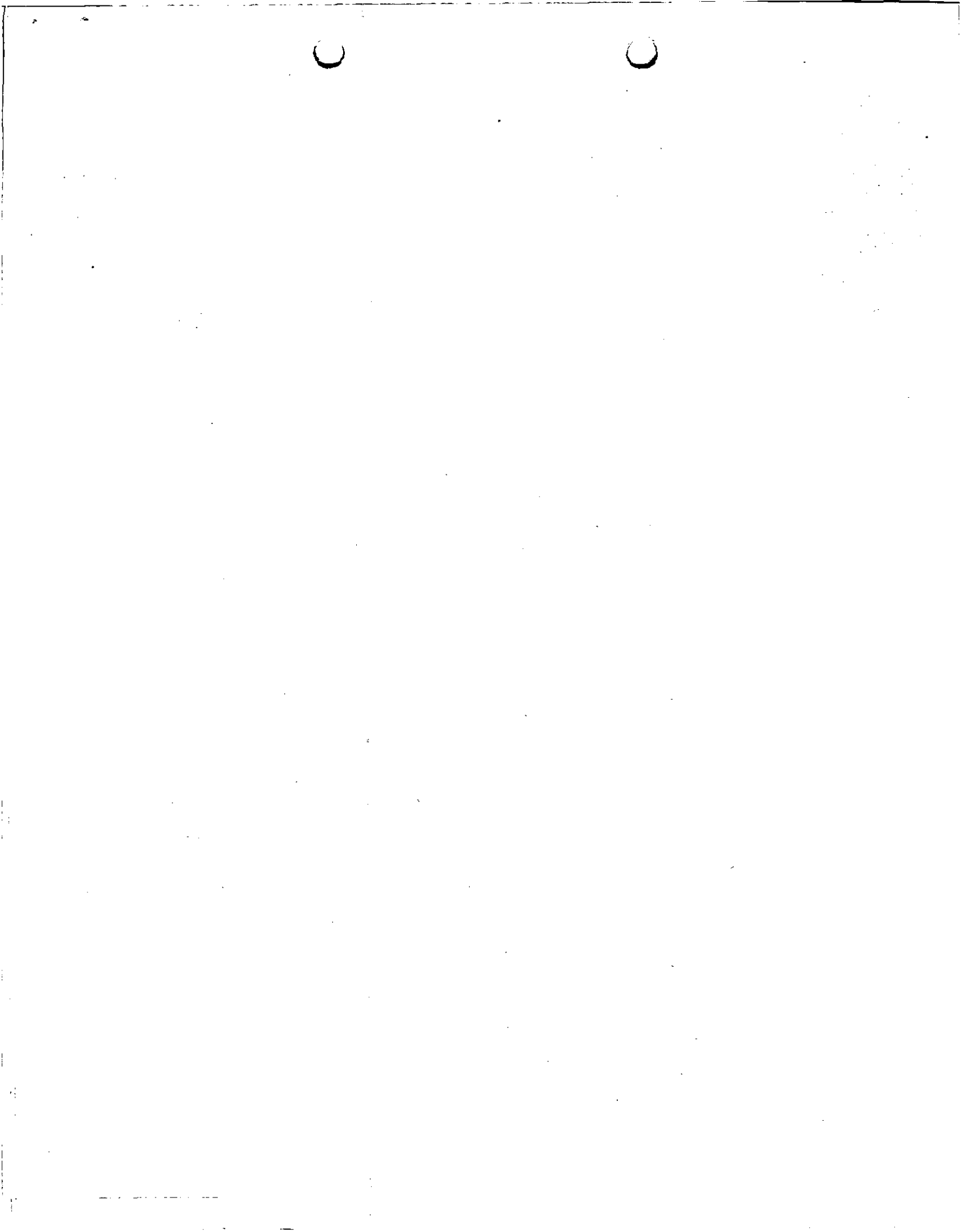
New York, New York  
October 26, 2010

BANTLE & LEVY LLP

By:



Lee F. Bantle (LB-7036)  
Amos B. Blackman (AB-7624)  
817 Broadway  
New York, New York 10003  
212.228.9666  
Attorneys for Plaintiff





**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**New York District Office**

33 Whitehall Street, 5<sup>th</sup> Floor  
New York, NY 10004-2112  
For General Information: (800) 669-4000  
TTY: (800)-669-6820  
District Office: (212) 336-3620  
General FAX: (212) 336-3625

**Charging Party**

James Corrigan  
419 62<sup>nd</sup> St.  
Brooklyn, NY 11220

**Charge No: 520 – 2008 – 04673**

**Respondent**

St. Francis College  
180 Remsen St.  
Brooklyn, NY 11201

## **DETERMINATION**

On behalf of the U.S. Equal Employment Opportunity Commission ("Commission"), I issue the following determination on the merits of the subject charge filed under the Age Discrimination in Employment Act of 1967 ("ADEA"), as amended. St. Francis College ("Respondent") is an employer within the meaning of the ADEA, and all requirements for coverage have been met.

James Corrigan ("Charging Party") alleges that he has been a fully tenured professor in the Biology department at Respondent College since 1972. In addition to his regular daytime teaching schedule at St. Francis, he had taught as an adjunct professor at Long Island University ("LIU") for some 22 years. In March 2007, Respondent offered him a retirement package and on April 13, he declined it. On May 24, 2007, Timothy Houlihan, Dean of Academic Affairs, notified him that he would no longer be allowed to teach at Long Island University without specific permission. Houlihan also terminated the use of Charging Party's laboratory, allegedly because he had created messy conditions that had been expensive for Respondent to clean. On June 13, 2007, Respondent sent Charging Party a letter, signed by Houlihan, confirming both new restrictions. Charging Party alleges that no other professors lost permission to teach at other institutions at this time. He further alleges that, from the spring semester of 2008 onward, he was required to teach evening classes at St. Francis on Tuesdays, although he had not taught an evening class for 24 years, and despite being scheduled for an early morning class on Wednesdays. Charging Party alleges that the purpose of these actions was to push him into involuntary retirement, in violation of the ADEA.

Respondent denies discriminating against Charging Party. Respondent claims that it became aware that Long Island University prohibited its faculty from teaching at Respondent, so

Respondent enacted its own policy of refusing permission for its teachers to teach at LIU in reciprocation. It denies that this policy was discriminatory in intent or effect, as it also impacted Dean Houlihan, who also taught at LIU. Respondent claims that Corrigan's lab privileges were revoked as a result of a significant mess he had made, requiring extremely expensive cleaning. Finally, it claims that it experienced a surge in enrollment in or around 2007, and offered evening courses to accommodate this demand. Courses were said to be matched to professors based on availability.

The Commission's investigation revealed that LIU's policy, which Respondent cites as prompting its own prohibition, was not an outright ban, and contained exceptions under which LIU faculty could teach at Respondent. Despite its awareness of the existence of these exceptions, Respondent maintained its own prohibition. Respondent claims that this policy was not discriminatory, as it impacted both Corrigan and Houlihan. However, Houlihan had stopped teaching at LIU prior to the implementation of this policy, rendering Charging Party the only faculty member impacted by it. Respondent's decision to revoke Charging Party's permission within a very short time after he declined to retire supports Charging Party's claim that it was part of an effort to get him to retire, supporting an inference of age discrimination.

The "mess" that was allegedly created by Corrigan in his lab had been cleaned by Respondent in the summer of 2006. Respondent was not able to explain why it waited nine months before revoking his lab privileges, and permitted him to continue using the lab in the interim. As no other reason has been provided, the timing of Respondent's decision to revoke his lab privileges one month after Charging Party declined to retire, supports his claim that it was done in response to his decision not to retire, leading to an inference of age discrimination.

Respondent was unable to provide a credible explanation as to why, starting in September 2008, Corrigan was assigned to teach a night class. Only two other professors taught evening courses, and neither taught an early morning class the following day. Respondent acknowledges that there were approximately five full-time professors in the department at this time, all of whom could have taught the night course. In addition, some or all of the five adjunct faculty members could have taught these courses, as they were remedial biology courses for non-majors. The fact that Charging Party had an 8:00 AM class the next morning created an unreasonably demanding work schedule that other faculty did not share. Respondent failed to provide evidence, upon request, of whether any other professors could have covered these evening classes.

Based on the above, Respondent's asserted defense does not withstand scrutiny and the Commission has determined that there is reasonable cause to believe that Respondent has discriminated against Charging Party on account of his age.

This determination is final. The Age Discrimination in Employment Act requires that, if the Commission determines that there is reasonable cause to believe that violations have occurred, it shall endeavor to eliminate the alleged unlawful employment practices by informal methods of conference, conciliation, and persuasion. Having determined that there is reason to believe that violations have occurred, the Commission now invites Respondent to join with it in an effort toward a just resolution of this matter. Enclosed is a letter outlining the proposed terms of conciliation.

Disclosure of information obtained by the Commission during the conciliation process may only be made in accordance with the Commission's Procedural Regulations.

If Respondent declines to enter into conciliation discussions, or when the Commission's representative is unable to secure an acceptable conciliation agreement, the Director shall so inform the parties, advising them of the court enforcement alternatives available to aggrieved persons and the Commission.

On behalf of the Commission:



Elizabeth Grossman  
Acting District Director

2/7/11  
Date