

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DAVID HEWETT v. XPLORE TECHNOLOGIES CORPORATION OF AMERICA	CIVIL ACTION NO. 12-5421
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MEMORANDUM RE: DEFENDANT'S MOTION TO DISMISS

Baylson, J.

March 11, 2013

The Motion to Dismiss the Complaint in this case will be **DENIED**. Plaintiff brings an age discrimination case, with common law claims added. Plaintiff has set forth a plausible, factual scenario detailing his employment for the Defendant and eventual involuntary termination on April 3, 2009. Plaintiff sets forth sufficiently specific facts showing age discrimination and adds as an alternative claim, an assertion of disparate impact upon Defendant's employees over the age of forty. The Motion to Dismiss disingenuously dwells on the disparate impact claim when it is clear it is only an alternative basis for relief. For this reason, the Court need not dwell on the arguments raised by the Defendant because the Defendant has misstated the essence of Plaintiff's claim.

Furthermore, the Plaintiff has also pled a claim of tortious interference with existing or prospective contractual relations, in which Plaintiff asserts that Defendant defamed him to a prospective employer. Plaintiff specifically identifies the name of this prospective employer, and alleges that Defendant's defamatory remarks to this employer resulted in Plaintiff's existing or prospective contractual relationships not being completed. These are sufficient allegations for pleading purposes. Defendant can secure additional facts through discovery.

The Court has also reviewed the Complaint's allegations for defamation, injurious

falsehood (disparagement), and invasion of privacy/false light. Defendant's arguments to dismiss the claims presume requirements more than federal pleading demands, and will be rejected.

An appropriate Order follows.

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