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11 Attorneys for Plaintiff Nicole Latone

12 **IN THE UNITED STATES DISTRICT COURT**

13 **FOR THE DISTRICT OF ARIZONA**

14 Nicole Latone, a single woman,

15 Plaintiff,

16 v.

17 Automatic Data Processing, Inc., a
18 Delaware corporation,

19 Defendant.

No.

COMPLAINT

20 Plaintiff Nicole Latone (“Plaintiff”), for her complaint against Defendant
21 Automatic Data Processing, Inc. (“ADP”), a Delaware corporation, alleges as follows:

22 **PARTIES, JURISDICTION AND VENUE**

- 23 1. Plaintiff is a resident of Mesa, Maricopa County, Arizona.
- 24 2. Defendant ADP is a Delaware corporation with its principal place of
25 business in Roseland, New Jersey.
- 26 3. Defendant has caused events to occur in Maricopa County, Arizona, out of
27 which Plaintiff’s claims arise.
- 28 4. Defendant employs more than fifteen (15) employees and it is a covered
employer as defined by Title VII of the Civil Rights Act of 1964, beginning at 42
U.S.C. § 2000e, A.R.S. § 23-1501, and the Arizona Civil Rights Act (“ACRA”), § 41-
1401 Arizona Revises Statutes (“A.R.S.”), *et seq.*

1 5. This Court has jurisdiction over the federal claims, Title VII of the Civil
2 Rights Act of 1964, 42 U.S.C. § 2000e-5.

3 6. This Court has supplemental jurisdiction over the state law claims
4 pursuant to 28 U.S.C. § 1367.

5 7. This action is authorized and instituted pursuant to Section 102 of the
6 Civil Rights Act of 1991, 42 U.S.C. § 1981a, which incorporates by reference 42 U.S.C.
7 2000e-2 or 2000e-3, and Section 706 of Title VII of the Civil Rights Act of 1964; and
8 A.R.S. §§ 41-1463 and 1481, and A.R.S. § 23-1501.

9 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

10 **BACKGROUND ALLEGATIONS**

11 9. Plaintiff started her employ with ADP in or about March 15, 2010, as a
12 District Manager (“DM”) in the TotalSource division.

13 10. As a DM, Plaintiff was responsible for selling ADP’s products and
14 services to small businesses.

15 11. Plaintiff was compensated through a base salary and commissions that
16 were earned based on achieving performance goals.

17 12. Plaintiff reported to Mathew Beals (“Beals”), Vice President of Sales,
18 when she was hired by ADP.

19 13. Plaintiff was assigned to the “new hire” territory zip codes 85006 and
20 85008, which allows all new DMs to solicit new business only in these two zip codes.

21 14. Other DMs were permanently moved from the “new hire” zip codes and
22 assigned other zip codes in the Phoenix Area.

23 15. Plaintiff was never removed from the “new hire” zip codes.

24 16. Plaintiff was assigned additional zip codes in the Phoenix area but was
25 never moved out of the “new hire” zip codes.

26 17. As a DM, Plaintiff had quotas for sales and leads that she was expected to
27 achieve.

28 18. ADP provided DMs their sales goals in an annual “sales plan.”

1 19. Plaintiff would receive monthly reports that tracked her performance
2 categories.

3 **ADP'S DISCRIMINATORY CONDUCT**

4 20. In or about July 2010, Beals provided Plaintiff a new company sales lead
5 to pursue.

6 21. Plaintiff went on the Initial Presentation (“IP”) for the new company lead.

7 22. ADP policy is that the district manager that participates in the IP is the
8 district manager that is given credit for the sales ultimately generated from that IP.

9 23. After the IP appointment concluded, Beals called Plaintiff and told her
10 that the lead he gave her was in another DM’s territory (zip code) and that Plaintiff had
11 to allow the other DM take the account, which would also provide the other DM with all
12 the additional sales and commissions that were generated from this account.

13 24. The sales lead went to a male DM.

14 25. Beals followed up with an email to Plaintiff where he apologized for the
15 loss of the lead. Beals informed Plaintiff that he would give her a “Wild Card,”
16 meaning that Plaintiff could ask Beals for anything she wanted.

17 26. Plaintiff asked Beals, via email, to please teach her about the service she
18 was selling because Beals had been doing it a long time.

19 27. Beals responded to Plaintiff, via email, that she was “too easy.”

20 28. In or about November 2010, Plaintiff was assigned a new sales executive,
21 Mike Gazzano (“Gazzano”), to be her direct supervisor.

22 29. Plaintiff was assigned an annual sales plan of \$175,000.00. Plaintiff
23 closed the year at 180% of her quota.

24 30. In or about January of 2011, Plaintiff sent an email to Gazzano about an
25 account, BEST IT DOT COM (“BEST”).

26 31. Under ADP’s own policies and procedures, BEST should have been
27 Plaintiff’s account.

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1 32. ADP did not award Plaintiff this account and Plaintiff lost all
2 commissions with BEST.

3 33. ADP did not compensate Plaintiff for any portion of the BEST account.

4 34. Plaintiff was the TotalSource DM of the month March 2011.

5 35. Plaintiff also qualified for a TotalSource sales contest for the time period
6 of January 2011 through March 2011.

7 36. Plaintiff spoke to Gazzano in or about March 2011 and expressed her
8 concerns about Danny Mormino (“Mormino”), another DM, being in Plaintiff’s territory
9 and not following the ADP policy for leads in another DM’s territory.

10 37. Plaintiff provided Gazzano a list from the ADP database that clearly
11 showed the dates that Mormino met with new account leads located in Plaintiff’s
12 territory.

13 38. Gazzano stated that he would “look into” this situation. However, no
14 action was ever taken as a result of Plaintiff’s complaint.

15 39. Plaintiff received a sales plan of \$300,000.00 for fiscal year 2011-12.

16 40. In March 2012, Gazzano informed Plaintiff that he was placing her on a
17 Performance Improvement Plan (“PIP”) because of her sales numbers.

18 41. Gazzano met with Plaintiff every week and on June 13, 2012, Gazzano
19 placed Plaintiff on a final warning.

20 42. Plaintiff continued to close business after the PIP was issued and her
21 performance was not discussed again.

22 43. Plaintiff was reassigned back to Beals in July 2012, which was the
23 beginning of ADP’s fiscal year.

24 44. In or about January 2013, Plaintiff received an email from Beals
25 informing Plaintiff that there was a current client, Sunora Energy, that wanted to bring
26 on an additional company or “additional control” as it is known under ADP’s internal
27 terminology.

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1 45. Beals informed Plaintiff that Mormino was no longer with ADP and
2 Sunora Energy (“Sunora”) was in her territory and that Sunora was now her assigned
3 account and had annual sales with ADP of \$200,000.00.

4 46. Plaintiff contacted Sunora’s owner to introduce herself as the new DM
5 in or about January 2013. As a result of this meeting, Plaintiff discovered that Sunora
6 had called ADP in March 2012 in search of an IP.

7 47. Under the ADP policies and procedures, Plaintiff should have been given
8 Sunora in March 2012 as it was located in her territory.

9 48. Beals gave the lead to Mormino in March 2012 instead of Plaintiff.

10 49. Plaintiff’s loss of the commissions for Sunora cost her approximately
11 \$40,000.00 in commissions as well as stock options and a lucrative trip that was valued
12 at approximately \$10,000.00.

13 **ADP’S RETALIATORY CONDUCT**

14 50. In May 2013, Beals referred another lead that should have been Plaintiff’s
15 to Jon Schwartz (“Schwartz”), a younger male DM.

16 51. Plaintiff complained to Beals.

17 52. Beals initially agreed that the lead was Plaintiff’s. However, Beals
18 decided, two days later, that the lead would have to be split in half with Schwartz
19 because he was part of the IP.

20 53. Plaintiff complained to Beals that splitting the lead with Schwartz
21 completely contradicted how he handled the account given to a male DM in or about
22 July 2010.

23 54. Plaintiff received an email from Beals on July 8, 2013, which also copied
24 Scott Halperin (“Halperin”), the Divisional Vice President, where Beals told Plaintiff
25 that even though she did not realize her sales goals for the fiscal year, she did show an
26 improvement in efficiency and overall production from the prior year. Beals stated that
27 he and Halperin were here to assist Plaintiff “in any way” so that she can meet and
28 exceed her goals for fiscal year 2014.

1 55. ADP assigns representatives to assist DMs known as Majors
2 Representatives (“Major”).

3 56. All ADP DMs had at least one, or more, Majors assigned to their territory.

4 57. Majors help generate leads and sales in their assigned territories that
5 benefit ADP and the DMs sales numbers.

6 58. Plaintiff was assigned a Major, Katie McCartin (“McCartin”), from in or
7 about January 2013 until July 2013.

8 59. Beals told Plaintiff that McCartin was no longer her Major in or about
9 July 2013.

10 60. Plaintiff was assigned another Major, Sigrid Hollingsworth
11 (“Hollingsworth”), in or about July 2013.

12 61. Plaintiff was told that Hollingsworth refused to work with Plaintiff.

13 62. Beals did not assign another Major to Plaintiff.

14 63. Plaintiff was never formally assigned another Major, even though every
15 other DM had one or more assigned to their territory.

16 64. In or about August 2013, McCartin text messaged Plaintiff inquiring why
17 she was no longer her Major.

18 65. McCartin stated that she wanted to work for Plaintiff and the DM
19 McCartin worked for agreed that she could be moved.

20 66. Plaintiff informed Beals that McCartin wanted to work as her Major.

21 67. Beals refused to reassign McCartin and stated that it “would not be fair”
22 to the DM McCartin worked for if he allowed McCartin to move back to Plaintiff.

23 68. Beals contacted Plaintiff on March 7, 2014, and told her that he was
24 assigning McCartin back to her as her Major, eight months after Plaintiff’s original
25 request.

26 69. In addition to the Majors, ADP has Small Business Services
27 Representatives (“SBS”) in a DM’s territory to help increase sales volume.

28 70. Plaintiff had one SBS representative assigned to her in July 2013.

1 71. Other females under forty had three to four SBS representatives assigned.

2 72. Male DMs, with less seniority than Plaintiff, had more SBS
3 representatives than Plaintiff.

4 73. Plaintiff asked Beals how she could have additional SBS representatives
5 assigned.

6 74. Beals would never provide Plaintiff with the criteria that he used to assign
7 additional SBS representatives.

8 75. Beals placed Plaintiff on a PIP on October 8, 2013, even though Plaintiff
9 was 129% of her quota year-to-date.

10 76. A male DM that had an identical sales quota and activity level was not
11 placed on a PIP.

12 77. Beals sent Plaintiff an email on November 5, 2013 requesting to have a
13 meeting. Beals did not reply back to Plaintiff's inquiry about what she could do to
14 prepare for the meeting.

15 78. Plaintiff filed her fist charge of discrimination and retaliation online with
16 the Arizona Civil Rights Division ("ACRD") on November 5, 2013.

17 79. Plaintiff showed up for her meeting with Beals on November 6, 2013.
18 Beals merely asked Plaintiff how she was and then told her she could leave.

19 80. January 2, 2014, Plaintiff emailed an associate, Adam Smith, and copied
20 Beals, in reference to an account Plaintiff was going to do a Business Proposal for on
21 January 10th, 2014. Plaintiff asked Beals if Adam Smith could also attend the meeting.
22 Beals did not reply to Plaintiff's email until Monday January 13, 2014, and informed
23 Plaintiff that she could not write the business for this account.

24 81. Beals knew that Plaintiff was meeting with the prospect and would not
25 reply back to Plaintiff's message until after her meeting with the prospective client.

26 82. Plaintiff met with Beals on January 6, 2014, where Beals put Plaintiff on a
27 final warning for performance even though Plaintiff was above plan.

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1 83. Beals sent Sheri Rowe (“Rowe”) with ADP Human Resources Plaintiff’s
2 final warning.

3 84. Plaintiff sent an email to Beals and Rowe about the time period Beals
4 referenced in Plaintiff’s final warning. Neither Beals nor Rowe responded to Plaintiff’s
5 email.

6 85. Plaintiff emailed Beals on February 12, 2014, asking for his assistance on
7 a potential new and large account. Beals never replied to Plaintiff’s email.

8 86. Plaintiff’s PIP stated that Beals would meet with Plaintiff weekly. Beals
9 never met with Plaintiff except to place her on a final warning.

10 87. Plaintiff submitted her letter of resignation on March 14, 2014, with a two
11 week notice, as a result of the ongoing discrimination and retaliation she received at
12 ADP.

13 88. Plaintiff was not allowed to complete an exit interview.

14 89. Plaintiff sent several emails to Rowe inquiring about her final check.
15 Rowe did not reply to Plaintiff’s email.

16 90. Plaintiff received an overnight letter from Rowe on March 17, 2014.

17 91. Rowe’s March 17, 2014 letter stated that she did not agree with Plaintiff’s
18 characterization of ADP’s actions and work environment and that ADP does “not
19 allow” such notice from their sales force. The letter further stated that Plaintiff’s
20 separation was effective March 14, 2014.

21 92. Upon information and belief, other ADP representatives that resigned
22 never received an overnight letter from human resources or that their resignation letter
23 was not allowed.

24 93. Plaintiff filed charges with the Equal Employment Opportunity
25 Commission (“EEOC”) against ADP for discrimination and retaliation based on sex and
26 age. Plaintiff exhausted her administrative remedies requirement.

27 94. Plaintiff received her right to sue letter for her EEOC charges.
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COUNT ONE

(Disparate Treatment/Termination/Retaliation

Based on Sex Under Title VII)

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4 95. Plaintiff incorporates and adopts the preceding paragraphs as if fully set
5 forth herein.

6 96. Plaintiff dual filed a claim of gender discrimination and retaliation on or
7 about November 14, 2013, EEOC No. 35S-2014-00084, with the EEOC and ACRD.

8 97. Plaintiff dual filed an additional charge of retaliation, CRD No.
9 P0012014000925/35A-2014-00275, on or about March 4, 2014 with the EEOC and
10 ACRD.

11 98. Plaintiff was discriminated against because of her gender in violation of
12 Title VII.

13 99. The discrimination includes ADP terminating Plaintiff's employment
14 because of her gender or retaliating against Plaintiff for complaining about
15 discriminatory conduct based on gender.

16 100. ADP unlawfully retaliated against and terminated Plaintiff's employment
17 because of sex, and in retaliation for Plaintiff's complaints about disparate treatment of
18 females.

19 101. The indicia of sex discrimination includes, but is not limited to, the fact
20 that ADP treated female employees less favorably than male employees in the same
21 position; making derogatory and harassing comments about female employees because
22 of their gender; retaliating against Plaintiff for lawfully complaining about the harassing
23 conduct under the pretext that Plaintiff did not pass her probationary period.

24 102. The discrimination against Plaintiff includes ADP constructively
25 discharging her employment for a reason that was clearly pretextual.

26 103. As a direct and proximate result of ADP's willful, intentional, and
27 unlawful discrimination, and termination of Plaintiff's employment, she has, and
28 continues to suffer, emotional distress, anxiety, stress, humiliation, embarrassment,

1 inconvenience, mental anguish, loss of enjoyment of her life, lost salary and bonuses,
2 loss of employment benefits, and other compensation in an amount to be proven at trial.

3 **COUNT TWO**

4 **(Age Discrimination)**

5 104. Plaintiff incorporates and adopts the preceding paragraphs as if fully set
6 forth herein.

7 105. Plaintiff is female, over forty (40), and was an employee of ADP.

8 106. Plaintiff was performing her job satisfactorily and was ahead of plan.

9 107. Plaintiff was discriminated by ADP because of her age.

10 108. Plaintiff was constructively discharged under circumstances giving rise to
11 an inference of age discrimination.

12 109. Upon information and belief, Plaintiff was replaced by a group of younger
13 or less-qualified employees.

14 110. As a direct and proximate result of ADP's willful, intentional, and
15 unlawful discrimination, and termination of Plaintiff's employment, she has, and
16 continues to suffer, emotional distress, anxiety, stress, humiliation, embarrassment,
17 inconvenience, mental anguish, loss of enjoyment of her life, lost salary and bonuses,
18 loss of employment benefits, and other compensation in an amount to be proven at trial.

19 **COUNT THREE**

20 **(ARIZONA CIVIL RIGHTS ACT)**

21 **(Retaliation)**

22 111. Plaintiff incorporates and adopts the preceding paragraphs as if fully set
23 forth herein.

24 112. Plaintiff is female, over forty (40), was an employee of ADP, and is a
25 protected class under the ACRA.

26 113. Plaintiff was discriminated against and retaliated against for filing charges
27 under the ACRA in violation of A.R.S. § 41-1401, *et seq.*

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1 114. The discrimination includes ADP taking adverse employment actions
2 against Plaintiff retaliation for her complaints about discriminatory conduct to
3 management and for Plaintiff exercising her rights under the ACRA.

4 115. Under A.R.S. § 41-1463(B), it is unlawful for an employer to discriminate
5 or discharge an individual on the basis of sex, or in retaliation for complaints about
6 discriminatory conduct under the ACRA.

7 116. The discrimination includes ADP taking adverse employment actions
8 against Plaintiff and retaliating against Plaintiff because of her complaints about
9 disparate treatment and retaliation.

10 117. ADP's retaliatory conduct made it objectively difficult or created
11 unpleasant working conditions such that a reasonable employee would feel compelled to
12 resign.

13 118. Plaintiff also endured a continuous pattern of harassment and
14 discriminatory treatment by ADP that would cause a reasonable employee to feel
15 compelled to resign.

16 119. As a direct and proximate result of ADP's willful, intentional, and
17 unlawful discrimination, and termination of Plaintiff's employment, she has, and
18 continues to suffer, lost income, loss of employment benefits, and other compensation
19 in an amount to be proven at trial.

20 **COUNT FOUR**

21 **(Constructive Discharge Under A.R.S. § 23-1502)**

22 120. Under A.R.S. § 23-1502, an employee is allowed to establish a claim for
23 constructive discharge.

24 121. Plaintiff believed she was being discriminated and retaliated against based
25 on her sex and age.

26 122. Plaintiff complained to ADP management.

27 123. Plaintiff filed two charges of discrimination with the EEOC and ACRD.
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1 124. The discrimination includes ADP taking adverse employment actions
2 against Plaintiff and retaliating against Plaintiff because of her complaints about
3 disparate treatment and retaliation.

4 125. ADP's retaliatory conduct made it objectively difficult or created
5 unpleasant working conditions such that a reasonable employee would feel compelled to
6 resign.

7 126. Plaintiff also endured a continuous pattern of harassment and
8 discriminatory treatment by ADP that would cause a reasonable employee to feel
9 compelled to resign.

10 127. Plaintiff provided ADP with at least fifteen written days' notice, in
11 addition to her written charges of discrimination and retaliation, that the working
12 conditions would cause her to resign.

13 128. ADP responded that they are accepting Plaintiff's notice as of March 14,
14 2014.

15 129. ADP did not pay Plaintiff for her notice period of constructive discharge.

16 130. As a direct and proximate result of ADP's willful, intentional, and
17 unlawful discrimination, and constructive termination of Plaintiff's employment, she
18 has, and continues to suffer, lost income, loss of employment benefits, and other
19 compensation in an amount to be proven at trial.

20 WHEREFORE, Plaintiff prays for judgment as follows:

21 A. For compensatory damages in favor of Plaintiff and against ADP, in an
22 amount to be proven at trial, as a result of ADP's tortious conduct in violation of Title VII
23 and the ACRA, together with prejudgment and post-judgment interest, as applicable, until
24 paid in full;

25 B. For an award of punitive damages in favor of Plaintiff and against ADP;

26 C. For an award of attorneys' fees and costs of court under 42 U.S.C. §
27 2000(e)-(k), 42 U.S.C. § 12205, and A.R.S. § 41-1481(j); and

28 D. For such other and further relief as this Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff hereby requests that upon trial of this action, all issues be submitted to and determined by a jury except those issues expressly reserved by law for determination by the Court.

Dated: February 25, 2015

KELLY McCOY, PLC

By: /s/ Rose C. McCaffrey
Rose C. McCaffrey
Matthew J. Kelly
Attorneys for Plaintiff