

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEROME BEARD,

Plaintiff,

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant.

Case No. 7:24-cv-6765

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Jerome Beard (“Beard”), complaining of the acts of Defendant International Business Machines Corporation (“IBM”), alleges and states the following:

INTRODUCTION

1. Several years ago, IBM refused to pay Beard sales commissions he had earned despite paying a white sales representative on Beard’s team a similar sized commission just months prior. After Beard and one of his managers, Scott Kingston (“Kingston”) complained repeatedly about this disparate treatment, Beard wasn’t paid his full commissions on a second deal, and Kingston was fired. This blatant discrimination led to multiple lawsuits.

2. First, Beard sued IBM for racial discrimination (the “Prior Lawsuit”),¹ which was resolved to the satisfaction of IBM and Beard after IBM’s motion for summary judgment was denied.

3. Next, Kingston sued for wrongful termination, alleging that he was terminated for speaking up against IBM’s racial discrimination against Beard (the “Kingston Lawsuit”).

4. Kingston’s case went to trial months after Beard’s case was resolved. Beard ultimately testified at that trial that he believed IBM had discriminated against him, and the jury returned a verdict of \$11.1 million against IBM.²

5. Following these legal challenges to its discriminatory practices, IBM began to put the wheels in motion to terminate Beard’s employment—which it ultimately did in December 2023.

6. On the heels of the parties’ resolution of the Prior Lawsuit in June 2020 and later testimony at the Kingston trial in April 2021, IBM severely cut back the number of accounts and the quality of those accounts in Beard’s assigned territory. Next, thanks to the constrained opportunities orchestrated by IBM, Beard was placed on a performance improvement plan (a “PIP”).

7. Despite IBM’s efforts to minimize his compensation and drive him out of the company, Beard still managed to close a large deal in the fall of 2023 that would

¹ *Beard v. International Business Machines Corporation*, No. 3:18-cv-06783-WHA, ECF No. 1 (N.D. Cal. 2018).

² The jury verdict was later upheld by the Ninth Circuit as to liability, *Kingston v. International Business Machines Corporation*, No. 21-35548, 2022 WL 3031590 (9th Cir. Aug. 1, 2022), but the non-economic damages were remitted, which led to an ultimate judgment of \$10 million, *Kingston v. International Business Machines Corporation*, No. 19-cv-1488, 2022 WL 17884456 (W.D. Wash. Dec. 23, 2022).

have satisfied the PIP's requirements and allowed him to keep his job. However, IBM failed to give Beard any revenue credit, much less pay him the commissions he'd earned on this deal, which caused Beard to miss the revenue target set in his PIP. And IBM then fired him.

8. Pursuant to its plan following his racial discrimination-based claims, IBM terminated Beard's employment in December 2023.

9. IBM's decision to restrict Beard's compensation and ultimately fire him can only be explained as driven by one factor: retaliation for his efforts to hold IBM accountable for its prior discrimination of him. Throughout his career with IBM, Beard received numerous accolades for his work, including two-time "Best of IBM" honors, which is a particularly exceptional achievement because the award is reserved for the top 1,000 employees out of IBM's 352,600 employees worldwide. Beard has been one of IBM's top performers for decades, including the fall of 2023 when he closed yet another big deal for IBM. It simply doesn't make sense to fire an employee like that.

10. IBM has victimized Beard again. Employees must be free to contest an employer's improper, racially motivated behavior. Beard has filed this action to recover damages incurred because of IBM's retaliation against him for opposing its discriminatory practices.

PARTIES

11. Beard is a citizen of Port St. Lucie, Florida, residing in St. Lucie County.

12. IBM was incorporated, and is existing, under the laws of the State of

New York. IBM's principal place of business is located in Westchester County, New York.

JURISDICTION

13. Subject matter jurisdiction over this matter is conferred upon and vested in this Court under 28 U.S.C. §§ 1331 and 1332.

14. This Court has supplemental jurisdiction over this matter pursuant to 28 U.S.C. § 1367(a).

15. This Court has personal jurisdiction over IBM because IBM is headquartered in this District and conducts substantial business within this District.

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2).

17. Additionally, venue is proper in this Court pursuant to 42 U.S.C. § 2000e-5(f)(3). IBM's scheme to terminate Beard was orchestrated through employees at its headquarters in Westchester County, New York. Further, because IBM's human resources department is based in Westchester County, New York, the employment records relevant to this action are maintained and administered in this District.

18. This action has been brought within all applicable statutes of limitations and/or repose.

FACTUAL ALLEGATIONS

Beard Was One of IBM's Most Successful Sales Representatives

19. Beard was a seasoned software sales representative that joined IBM soon after he graduated college in 1983. His initial role was sales, however, he

advanced quickly into assignments in San Francisco and New York, and IBM even sponsored his MBA from NYU. After he earned his MBA, IBM promoted him to launch a new IBM business in West Palm Beach, Florida.

20. He left IBM for a short stint after the launch of that new business and worked as a vice president at a Silicon Valley startup and as a consultant, before rejoining IBM in 2003.

21. For the majority of the last two decades at IBM, Beard sold Embedded Solution Agreements, or ESAs, which are contract vehicles IBM uses to license its software to other technology companies.

22. Beard's compensation consisted of a base salary paired with uncapped commissions at all relevant times.

23. During his tenure with IBM, Beard was a highly respected and successful sales representative—exceeding his assigned sales quota every year from 2009 to 2020 (when he resolved his lawsuit).

24. Twice he received “The Best of IBM” awards, one of IBM's highest honors given to a small percentage of IBM employees for “extraordinary contribution.”

25. Beard was also on the “Executive Resources List” for many years at IBM, which is a list of high potential employees who get to interview for key, high-profile assignments and are tracked and targeted for senior leadership roles at IBM.

Beard's Prior Lawsuit Against IBM

26. In 2017, Beard closed two large IBM products and services deals with

HCL America, Inc. (“HCL”).

27. These sales resulted in \$25,200,000 in commissionable revenue to Beard. For his efforts in closing the deals, Beard earned \$2,901,806.

28. IBM, however, refused to pay him this amount, even though his managers thought he should have been paid in full and signed off on full payment to him.

29. IBM capped the commissions payments to Beard on the two HCL deals in 2017. In total, Beard was paid \$410,572, leaving a balance of \$2,491,234 in commissions.

30. The only reason IBM gave Beard for why he was not paid all of the commissions he had earned, was that IBM thought it was simply too much money to pay Beard, and thus, it was unwilling to pay him in full.

31. Beard’s capped payment was particularly offensive to Beard and his managers because a white peer on Beard’s team had just closed a similar-sized deal and earned and been paid a similar-sized commission without any issue just months prior. The only difference Beard or his managers could see was that Beard’s peer was white and Beard was an African American.

32. On November 8, 2018, Beard filed a complaint against IBM in the United States District Court for the Northern District of California. A copy of the complaint is attached here as Exhibit A.

33. Among other claims related to IBM’s underpayment of commissions to him, Beard alleged a cause of action based on racial discrimination in violation of the

California Fair Employment & Housing Act, Cal. Govt. Code § 12940 *et seq.*

34. The Prior Lawsuit alleges that “IBM engaged in the [unlawful] conduct . . . based, in part, on Mr. Beard’s race. Specifically, IBM capped Mr. Beard’s commissions but did not cap commissions [of] similarly situated white sales employees.” Exhibit A, ¶ 75; *id.* at ¶ 41 (“During the same sales period, two of Mr. Beard’s peers (both white) closed deals substantially similar to Beard’s deals but each were paid in excess of \$1,000,000 in sales commissions. This glaring discrimination was called out to IBM’s attention by one of Mr. Beard’s managers, Scott Kingston. Not only did IBM ignore it and refuse to reverse the cap on Mr. Beard’s commissions, IBM doubled down by firing Mr. [Kingston] in retaliation and refusing to pay him his own commissions!”).

35. After discovery, IBM moved for summary judgment on all of Beard’s claims, including those for racial discrimination and equal pay violations.

36. On April 9, 2020, the Court denied IBM’s motion for summary judgment in the Prior Lawsuit. *Beard v. Int’l Business Machines Corp.*, No. 18-cv-06783, 2020 WL 1812171 (N.D. Cal. Apr. 7, 2019); *id.* at *11-13 (concluding that Beard established a prima facie case of discrimination and that Beard met his burden to show IBM’s reason for the adverse action was pretextual).

37. On June 15, 2020, the Prior Lawsuit was dismissed with prejudice through joint stipulation after it was resolved to the satisfaction of IBM and Beard. *Beard v. Int’l Business Machines Corp.*, No. 18-cv-06783, ECF No. 92 (N.D. Cal. 2020).

The Kingston Trial

38. After IBM executives decided not to pay Beard his full commissions, Beard's managers stood up for him, particularly his second line manager, Scott Kingston.

39. Kingston compared what happened to Beard to Beard's peer, Nick Donato, who had closed a comparable sized deal just months prior and was paid his full seven-figure sales commission from that deal. Kingston voiced that the only explanation that could make sense was that Beard was being discriminated against.

40. IBM investigated Kingston's concerns, or so he thought. After an internal investigation that Kingston believed was into his allegations of racial discrimination, he found out that the investigation was actually into whether he should have allowed the white sales rep to be paid the sales commission the rep was just paid a few months prior.

41. The investigator and others at IBM ultimately determined that he shouldn't have, and that Kingston and two other managers should be fired for allowing that payment to be made.

42. After those three managers were fired, all three sued IBM for wrongful termination. Kingston specifically asserted claims that he had been wrongfully terminated for blowing the whistle on IBM's racial discrimination of Beard.

43. Following complete discovery including depositions, the Kingston case went to trial on April 5, 2021. Beard testified during Plaintiff's case-in-chief—stating he “absolutely” believed IBM was discriminating against him given that it had fully

paid a white peer on a similar deal. Beard also testified that Kingston agreed, the lack of consistency in how he was treated was a problem, and that Kingston was supportive of him. Kingston won at trial, and, after IBM's appeal to the Ninth Circuit Court of Appeals, a \$10 million judgment was entered against IBM in February of 2023 and was fully satisfied by IBM in March 2023.

IBM's Coordinated Retaliation

44. Beard's Prior Lawsuit is what ultimately resulted in his termination in December of 2023. Following resolution of the previous suit, Beard's work assignments and overall compensation began to change. While each change to his scope of work and territory seemed odd to him, IBM always presented them to him as positive opportunities.

45. However, once Beard was ushered out the door at the end of 2023, IBM's orchestrated effort to retaliate against him finally became clear with the benefit of hindsight by Beard.

46. In 2021, IBM made significant changes to the territory and accounts he was responsible for. Large accounts like Salesforce where Beard had already scheduled a meeting with the Head of Corporate Procurement were oddly removed without explanation, and IBM left Beard without any strategic ESA accounts in his territory for the first time in 15 years. Relatedly, for the first time in 15 years, Beard's territory solely consisted of dormant, competitive, and whitespace³ accounts.

47. Quantitatively, Beard's territory was reduced from 4,800 accounts to 20.

³ Whitespace accounts refer to accounts that do not presently, and often have not historically, conducted any business with IBM.

48. As for the quality of the accounts, as noted, IBM left Beard with second- and third-tier accounts. Many of these accounts were deemed “broken accounts” which meant that they had previously been strategic accounts for IBM, but the relationship between the client and IBM had gone south. One example of this is Palantir. When Beard was assigned to this account, he asked the previous account executive how to seek revenue opportunities with Palantir, the outgoing account executive told Beard not to call on them for a while due to the way the partnership ended. Another example is Sabre. Beard was assigned this account just after they announced a 10-year, \$2,000,000,000 deal with Google that included plans to remove “all IBM mainframes” from Sabre’s data centers.

49. The change to Beard’s territory directly and substantially reduced his compensation. His commissions dropped significantly, and Beard’s average income in 2021-2023 dropped to less than half of what he had earned from 2017-2020 as a consequence.

50. In 2021, Beard and his manager, Greg Mount, realized he could not meet his yearly quota, or “survive,” based on the current accounts in his territory. Beard received slight additions to his territory starting in 2022, but the opportunities available in those accounts were slim to none, which IBM knew and expected.

51. Beard finished 2022 with 49 accounts and finished 2023 with 52 accounts; however, Beard’s territory was still comprised of accounts without any history of doing business with IBM and essentially no interest in doing so in the near future.

52. Even with these slight additions to his territory, Beard's commissions remained well below what he had been earning before the resolution of the Prior Lawsuit. This was not for a lack of effort or talent from Beard, however. He remained the same valuable, experienced employee that IBM had honored multiple times. Beard's earnings changed because IBM set him up for failure. No sales employee could have generated a fair living out of the accounts forced on Beard.

53. Because Beard failed to hit his quota in the second half of 2022, IBM put him on a PIP in the second half of 2023. And he would have satisfied the PIP but for IBM's further efforts to oust him by not giving him credit for a deal that he closed in October 2023.

54. When Beard's manager Greg Mount told Beard that IBM was terminating him, he shared with Beard that he had told the human resources representative handling the termination that "I cannot believe that I'm firing my best employee, this makes no sense."

The Oracle-Cerner Deal

55. Beard continued to press on with his work despite the drastic changes to his accounts following the Prior Lawsuit, but IBM's handling of a large transaction that closed in the third quarter of 2023 (the "Oracle-Cerner Deal") was the final blow by IBM.

56. In 2021, Oracle Corporation, a large software company, acquired Cerner, a healthcare technology company.

57. This acquisition compromised IBM's ultimate plan to retaliate against

Beard. Oracle was one of Beard's competitive accounts, but Cerner was one of IBM's largest ESA accounts.

58. The unexpected change forced IBM to do everything it could to delay and obstruct potential revenue from these accounts until after Beard was fired.

59. In 2022, Cerner sent a letter to IBM requesting that all Cerner contracts be migrated to Oracle America. IBM, however, did not take any action on this request and did not move the Cerner quota and account responsibilities to Beard.

60. The IBM-Cerner team no longer believed there was revenue opportunity with Cerner starting in 2023 because Oracle controlled all purchasing decisions. Consequently, IBM removed all sales coverage from Cerner.

61. Next, Oracle complained to Beard about the lack of sales coverage and asked that he help with an upcoming renewal of its contract in September and a corresponding software purchase, i.e. the Oracle-Cerner Deal.

62. As the deal was coming to fruition, there was internal debate at IBM over how sales representatives working on the Oracle-Cerner Deal would be compensated and how the revenue would be allocated. The debate only existed because IBM had failed to migrate existing Cerner contracts over to Oracle and had still assigned Cerner to the IBM-Cerner team's territory, even though they weren't actually working on the Oracle-Cerner Deal.

63. Eventually, IBM decided the third quarter transaction revenue would flow to a single account based on the name and address on the contract. If other representatives not assigned to the account that got credit helped with the deal, they

could get up to a \$25,000 bonus.

64. Beard then received odd requests from his third-line manager, Dave Mitchell. He instructed Beard not to ask Oracle about the address on the deal and not to participate in booking the order. In the previous 15 years that Beard had been in this type of role with IBM, he had never heard such requests from a manager or an executive.

65. In the end, Beard took over sales responsibility for the Oracle-Cerner Deal and closed a \$33 million transaction.

66. Oracle's name and address were on the contract.

67. Yet, Beard was not paid commissions on the deal, which should have totaled about \$630,000, despite having a lead role in closing the deal and owning the account and territory in which the deal closed.

68. IBM only offered to pay Beard a bonus equal to *four percent* of what he earned in commissions.

69. IBM forced Beard's operations team to book the deal under Cerner rather than Oracle and excused its actions based on the fact that it had allegedly assigned the quota for the Oracle-Cerner Deal to the IBM-Cerner team instead of Beard (which wasn't really true and violated IBM's commissions policies in any event).

70. In hindsight, IBM purposefully sent Beard on a wild-goose chase. It allowed him to spend most of the third quarter landing a \$33,000,000 deal for the company that it never planned to credit towards his revenue attainment.

71. After undercutting Beard's revenue credit in the Oracle-Cerner Deal, IBM extended his PIP through December 31.

72. Since he'd been assigned weak accounts by IBM, then been asked to spend his time closing a deal IBM refused to give him credit for, Beard was unable to meet the PIP's goals.

73. IBM terminated Beard in December of 2023. That termination was the culmination of a concerted effort by IBM to force Beard out of IBM in retaliation for standing up to IBM for its discriminatory conduct against him.

Beard Exhausted his Administrative Remedies

74. Beard exhausted his administrative remedies at the Equal Employment Opportunity Commission.

75. On May 10, 2024, Beard filed his charge of discrimination with the EEOC and the Florida Commission on Human Relations.

76. On August 15, 2024, Beard was issued a Notice of Right to Sue.

77. Beard has filed this complaint within 90 days of receipt of that notice.

FIRST CLAIM FOR RELIEF
(Retaliation in Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a))

78. Plaintiff realleges and incorporates the prior paragraphs of this Complaint as if fully set forth herein.

79. Beard is African American.

80. He pursued a Prior Lawsuit against IBM, in which he opposed his employer's racially discriminatory payment of uncapped commissions.

81. IBM terminated Beard's employment in December 2023 because of his opposition to IBM's prior discriminatory actions against him, including the Prior Lawsuit.

82. IBM attempted to conjure up a pretext for Beard's termination by minimizing his territory and refusing to pay his commission on the Oracle-Cerner Deal.

83. The retaliation was planned, and clear, with the benefit of hindsight in the greater context of Beard's employment with IBM.

84. IBM's conduct violates Title VII of the Civil Rights Act of 1964 and has caused injury to Beard in that he is no longer gainfully employed at the company that he devoted nearly forty years to.

85. Beard is entitled to recover damages in the form of lost wages, compensatory damages for his job search, emotional distress, and attorneys' fees and costs.

86. Further, the conduct was engaged in by IBM senior managers and condoned and ratified by other senior managers and officers of the company and was done so with malicious and fraudulent intent. Accordingly, punitive damages are warranted in an amount to be proven at trial.

87. Beard has satisfied the requisite administrative requirements necessary in order to pursue this matter in court.

SECOND CLAIM FOR RELIEF
(Retaliation in Violation of 42 U.S.C. § 1981)

88. Plaintiff realleges and incorporates paragraphs 1-77 of this Complaint as if fully set forth herein.

89. Beard pursued a Prior Lawsuit against IBM, in which he opposed his employer's racially discriminatory payment of uncapped commissions.

90. In doing so, Beard had a good faith, reasonable belief that IBM's practices related to payment of uncapped commissions were discriminatory and in violation of the law.

91. IBM, being the named Defendant in the Prior Lawsuit, knew of Beard's protected activity.

92. IBM terminated Beard's employment in December 2023 because of his opposition to IBM's prior discriminatory actions against him, including the Prior Lawsuit.

93. IBM attempted to conjure up a pretext for Beard's termination by minimizing his territory and refusing to pay his commission on the Oracle-Cerner Deal.

94. The retaliation was planned, and clear, with the benefit of hindsight in the greater context of Beard's employment with IBM.

95. IBM's conduct violates Beard's equal rights under the law pursuant to 42 U.S.C. § 1981. It has caused injury to Beard in that he is no longer gainfully employed at the company that he devoted nearly forty years to.

96. Beard is entitled to recover damages in the form of lost wages,

compensatory damages for his job search, emotional distress, and attorneys' fees and costs.

97. Further, the conduct was engaged in by IBM senior managers and condoned and ratified by other senior managers and officers of the company and was done so with malicious and fraudulent intent. Accordingly, punitive damages are warranted in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Retaliation in Violation of the Florida Civil Rights Act ("FCRA"), Fla. Stat. § 760.10(7))

98. Plaintiff realleges and incorporates paragraphs 1-77 of this Complaint as if fully set forth herein.

99. Beard resided in and worked from St. Lucie County, Florida when he was terminated.

100. Beard engaged in a statutorily protected activity by opposing IBM's racial discrimination in his Prior Lawsuit.

101. IBM terminated Beard in December 2023 after the parties resolved his Prior Lawsuit.

102. Beard's termination was directly related to his opposition of IBM's racially discriminatory commission-payment practices.

103. IBM plotted to minimize Beard's territory and refused to pay his commission on the Oracle-Cerner Deal following his Prior Lawsuit and his participation in the Kingston trial. It did so in order to manufacture a pretext for firing Beard in December 2023.

104. IBM's conduct violates the anti-retaliation provision of the FCRA and has caused injury to Beard in that he is no longer gainfully employed at the company that he devoted nearly forty years to.

105. Beard is entitled to recover damages in the form of lost wages, compensatory damages, and attorneys' fees and costs.

106. Further, the conduct was engaged in by IBM senior managers and condoned and ratified by other senior managers and officers of the company and was done so with malicious and fraudulent intent. Accordingly, punitive damages are warranted in an amount to be proven at trial.

107. Beard has satisfied the requisite administrative requirements necessary in order to pursue this matter in court.

FOURTH CLAIM FOR RELIEF
(Unjust Enrichment)

108. Plaintiff realleges and incorporates paragraphs 1-77 of this Complaint as if fully set forth herein.

109. Beard resided in and worked from St. Lucie County, Florida when he was terminated.

110. No express contract existed between Beard and IBM.

111. Beard conferred a benefit on IBM by rendering valuable sales services. Specifically, Beard closed the Oracle-Cerner Deal, which was a \$33,000,000 transaction.

112. IBM was aware of these services and accepted the benefit. Further, the parties understood that these services were not conferred gratuitously.

113. Indeed, IBM was on notice that Beard expected to be paid commissions for these services.

114. IBM refused to pay Beard his commission on the Oracle-Cerner Deal.

115. It would be unjust for IBM to retain the benefits stemming from the Oracle-Cerner transaction without compensating Beard.

116. Pursuant to the doctrine of unjust enrichment, Beard is entitled to recover compensatory damages against IBM in an amount sufficient to fully pay Beard for the valuable services he rendered.

PRAYER FOR RELIEF

Wherefore, Beard prays the Court for the following relief:

1. That Beard have and recover from IBM for violations of Title VII of the Civil Rights Act of 1964 in the amount exceeding \$75,000, plus interest, costs, and attorneys' fees allowed by law;
2. That Beard have and recover from IBM for its retaliation in violation of 42 U.S.C. § 1981 in the amount exceeding \$75,000, plus interest, costs, and attorneys' fees allowed by law;
3. That Beard have and recover from IBM for violations of the anti-retaliation provision of the FCRA in the amount exceeding \$75,000, plus interest, costs, and attorneys' fees allowed by law;
4. That Beard have and recover from IBM the commission earned on the Oracle-Cerner Deal pursuant to the doctrine of unjust enrichment;
5. That Beard be awarded attorneys' fees pursuant to Fla. Stat. § 448.08

and any other basis allowed by law;

6. That Beard be awarded punitive damages;
7. That all costs in this action be taxed against IBM; and
8. That the Court award Beard such other and further relief as this Court

may deem just and proper.

JURY DEMAND

PLAINTIFF DEMAND A TRIAL BY JURY.

This the 6th day of September, 2024.

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* *To Be Admitted Pro Hac Vice*

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