

# *Capriotti v. Pure Markets Case File*

*The Sedona Conference*



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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MARIA CAPRIOTTI,	)	
	)	
Plaintiff,	)	NO. <u>3:20 - CV - 98031</u>
	)	
v.	)	COMPLAINT AND JURY DEMAND
	)	
PURE MARKETS,	)	
	)	
Defendant.	)	

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NATURE OF THE ACTION

1. Plaintiff, Maria Capriotti, by and through her undersigned counsel, brings this employment discrimination action pursuant to the Age Discrimination in Employment Act of 1967 (the “ADEA”), as amended, 29 U.S.C. §§ 621 *et seq.*, against Defendant, Pure Markets. Pure Markets engaged in unlawful employment practices, including discrimination against Ms. Capriotti on the basis of her age, sixty-two (62), when it terminated her employment and replaced her with a younger employee. Ms. Capriotti seeks damages and appropriate relief to remedy these discriminatory and adverse employment practices.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to section 7(b) of the ADEA, 29 U.S.C. § 626(c)(1).

3. Venue is appropriate in this District under 28 U.S.C. § 1391(b) and (c).

4. The employment practices alleged herein to be unlawful were committed in Glendale, Maricopa County, Arizona, within the jurisdiction of the United States District Court for the District of Arizona.

### PARTIES

5. Plaintiff Maria Capriotti is a citizen of the United States and resides in Glendale, Maricopa County, Arizona. At all material times, Ms. Capriotti was employed by the Defendant.

6. At all relevant times, Defendant Pure Markets a/k/a Pure Markets, Inc. (hereinafter “Defendant”) has been an Arizona corporation continuously doing business in the State of Arizona, and has continuously employed at least 20 persons.

7. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 11(b), (g), and (h) of the ADEA, 29 U.S.C. §§ 630(b), (g) and (h).

8. All of the acts and failures to act alleged herein were duly performed by and attributable to the Defendant, and occurred in Glendale, Maricopa County, Arizona.

### PROCEDURAL REQUIREMENTS

9. All conditions precedent to the institution of this lawsuit have been fulfilled.

10. On approximately January 10, 2020, within three hundred (300) days of the act of which she complains, Plaintiff filed a charge of employment discrimination against Defendant with the Equal Employment Opportunity Commission (hereinafter “EEOC”).

11. More than sixty (60) days have passed since January 10, 2020, when Ms. Capriotti filed a charge of discrimination with the EEOC alleging violations of the ADEA by Defendant.

### FACTUAL BACKGROUND

12. Plaintiff was born on October 29, 1957.

13. Plaintiff began working for Defendants on or about December 13, 1975, when she was 18 years old.

14. On that date, plaintiff began working at Pure Markets' Glendale store, and worked at the Glendale store for the entirety of her employment at Pure Markets.

15. Plaintiff received several promotions, reaching her highest position of "store marketing manager" responsible for all in-store marketing, integrating in-store marketing with company-led advertising, and leading store outreach efforts to the local community.

16. On or about May 24, 2019, in Ms. Capriotti's presence, an employee at the Glendale store told one of Ms. Capriotti's co-workers that "looking at Maria's regular customers, she seems to be running a senior day care center in here."

17. On or about June 20, 2019, critical social media postings on the Pure Markets Facebook page from an unnamed Pure Markets' employee appeared. Specifically, one such posted comment on the store's Facebook page stated, "PokerSharkMama needs to tweet more and gamble less." The post was subsequently deleted.

18. On or about July 15, 2019, Defendant demoted Ms. Capriotti to the position of marketing associate. Ms. Capriotti remained in this position until she was terminated.

19. Following Ms. Capriotti's demotion, her former assistant, age 26, was promoted to Ms. Capriotti's position of marketing manager and became Ms. Capriotti's supervisor. The

employee performed the same or similar duties as those that Ms. Capriotti had been performing. However, this employee had less experience and fewer qualifications than Ms. Capriotti.

20. Ms. Capriotti was able to perform the duties of both store marketing manager and marketing associate in a satisfactory manner.

21. At no time during the course of her employment did Ms. Capriotti receive unfavorable reviews from her superiors.

22. Ms. Capriotti was honored with Pure Markets' "Employee of the Year Award" in 2015.

23. On or about January 2, 2020, Defendant terminated Ms. Capriotti. Ms. Capriotti was sixty-two (62) years old at the time of her termination.

24. When Plaintiff arrived at work on January 2, 2020, the store manager greeted her and took her into his office. The assistant store manager was in the office. The blinds in the office were not drawn and the meeting was visible to people in the store.

25. The store manager told Plaintiff she was being laid off. He told her that cutbacks were being made and there was no room for people like Plaintiff, who "weren't even capable of learning to use social media." The manager and assistant manager laughed after he said that.

26. The store manager then opened the door to his office and told Plaintiff to leave.

27. In full view of employees and customers at the store, some of whom had known Plaintiff for years, the store manager called over a store security guard and told him to give Plaintiff a cardboard box, and to watch her while she packed her personal belongings, and then to escort her out of the store. The store manager told the security guard to escort Plaintiff off the premises.

28. As Plaintiff walked towards her locker with the security guard, she heard the store manager say, in a loud voice, "The senior day care center is officially closed."

29. People in the store were taking pictures, and upon information and belief, recording these events on their phones.

30. The security guard watched Plaintiff pack her belongings and escorted her out of the store.

31. Following Ms. Capriotti's termination, her position as marketing associate was filled by an employee under the age of forty (40) who performed the same or similar duties Ms. Capriotti had performed. Again, this employee had less experience and fewer qualifications than Ms. Capriotti.

COUNT I  
AGE DISCRIMINATION  
(VIOLATION OF 29 U.S.C. § 621)

32. Plaintiff adopts and incorporates paragraphs 1 through 31 as if fully set forth herein.

33. Ms. Capriotti is a member of a protected class because of her age: sixty-two (62).

34. On July 15, 2019, Defendant engaged in disparate treatment of Ms. Capriotti by demoting her on the basis of her age and replacing her with a younger, less qualified candidate, in violation of 29 U.S.C. § 621, et seq., the ADEA.

35. On or about January 2, 2020, Defendant again subjected Ms. Capriotti to disparate treatment by terminating her on the basis of her age and replacing her with a younger, less qualified candidate, in violation of 29 U.S.C. § 621, et seq., the ADEA.

36. The unlawful employment practices complained of were willful within the meaning of section 7(b) of the ADEA, 29 U.S.C. § 626(b).

37. As a direct and proximate result of Defendant's unlawful employment practices, Plaintiff suffered emotional harm, suffered, and will continue to suffer, a loss of wages and other

employment benefits, a loss of earning capacity, damages to her professional reputation, embarrassment, humiliation and other forms of mental anguish and distress.

COUNT II  
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

38. Plaintiff adopts and incorporates paragraphs 1 through 37 as if fully set forth herein.

39. Plaintiff was devastated and humiliated by the inappropriate and unprofessional way the store manager and the assistant store manager conducted themselves on the day she was terminated.

40. Since the day Defendant terminated her employment in the manner described above, Plaintiff has suffered from panic attacks and depression, which have caused her to seek medical help and take medication. She finds it extremely difficult to leave her house, because the thought of seeing one of the people who witnessed how she was treated when she was terminated causes her to have a panic attack. As a result, she rarely leaves her house.

41. Defendant's conduct in connection with the termination of Plaintiff's employment was intentional and reckless.

42. Defendant's conduct in connection with the termination of Plaintiff's employment was extreme and outrageous.

43. Defendant's conduct in connection with the termination of Plaintiff's employment caused Plaintiff to suffer severe emotional distress.

PRAYER FOR RELIEF

Wherefore, the plaintiff respectfully requests that this Court:

- A. Grant a permanent injunction enjoining Defendant, its officers, agents, servants, employees, successors, and assigns and all persons in active concert or participation

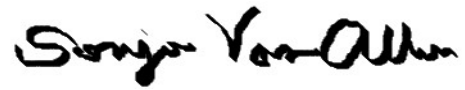
- therewith, from engaging in any employment practices which results in the termination of any employee on the basis of age;
- B. Order Defendant to institute and carry out policies, practices and programs which provide equal employment opportunities for persons forty (40) years of age and older, and which eradicate the effects of their past and present unlawful employment practices;
  - C. Grant a judgment requiring Defendant to pay Ms. Capriotti appropriate back wages and benefits in an amount to be determined at trial, an equal sum as liquidated damages and prejudgment interest;
  - D. Order Defendant to make Ms. Capriotti whole by providing the affirmative relief necessary to eradicate the effects of its unlawful practices including, but not limited to, rightful-place reinstatement with seniority restored, or front pay in lieu thereof;
  - E. Grant Ms. Capriotti compensatory damages, punitive damages, attorneys' fees and costs; and
  - F. Grant such further relief as the Court deems necessary and proper in the public interest.

JURY DEMAND

The Plaintiff hereby requests a trial by jury in the above-captioned matter.

DATED: March 15, 2020.

Respectfully submitted,  
DAVIDSON AND VAN ALLEN, LLP



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*Attorney for Plaintiff*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

---

MARIA CAPRIOTTI,	)	
	)	
Plaintiff,	)	NO. <u>3:20 - CV - 98031</u>
	)	
v.	)	ANSWER AND AFFIRMATIVE
	)	DEFENSES
PURE MARKETS,	)	
	)	
Defendant.	)	

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Defendant Pure Markets, by and through its attorneys of record, Baker, Skadden & Latham, hereby answer Plaintiff's Complaint as follows:

NATURE OF THE ACTION

1. Paragraph 1 is denied.

JURISDICTION AND VENUE

2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted in that Plaintiff's employment occurred in Glendale,

Maricopa County, Arizona, within the jurisdiction of the United States District Court for the District of Arizona, but Defendant denies the allegation that the employment practices were unlawful.

PARTIES

- 5. Paragraph 5 is admitted.
- 6. Paragraph 6 is admitted.
- 7. Paragraph 7 is admitted.
- 8. Paragraph 8 is denied.

PROCEDURAL REQUIREMENTS

- 9. Paragraph 9 is denied, though Defendant admits that the Plaintiff filed a charge with the Equal Employment Opportunity Commission.
- 10. Paragraph 10 is admitted.
- 11. Paragraph 11 is admitted.

FACTUAL BACKGROUND

- 12. Paragraph 12 is admitted.
- 13. Paragraph 13 is admitted.
- 14. Paragraph 14 is admitted.
- 15. Paragraph 15 is admitted.
- 16. Paragraph 16 is denied.
- 17. Paragraph 17 is denied.
- 18. Paragraph 18 is denied, though Defendant admits that Plaintiff's position was changed on July 15, 2019 to marketing associate.
- 19. Paragraph 19 is denied, though Defendant admits that an employee under the age of forty (40) was assigned to the position of marketing manager.
- 20. Paragraph 20 is denied.

21. Paragraph 21 is denied.
22. Paragraph 22 is admitted.
23. Paragraph 23 is admitted.
24. Paragraph 24 is denied.
25. Paragraph 25 is denied.
26. Paragraph 26 is denied.
27. Paragraph 27 is denied.
28. Paragraph 28 is denied.
29. Paragraph 29 is denied.
30. Paragraph 30 is denied.
31. Paragraph 31 is denied, though Defendant admits that an employee under the age of forty (40) was assigned to the position of marketing manager.

COUNT I  
AGE DISCRIMINATION  
(VIOLATION OF 29 U.S.C. § 621)

32. Defendant repeats and re-alleges its answers to paragraphs 1 through 31 as though fully set forth herein.

33. Paragraph 33 is admitted.
34. Paragraph 34 is denied.
35. Paragraph 35 is denied.
36. Paragraph 36 is denied.
37. Paragraph 37 is denied.

COUNT II  
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

38. Defendant repeats and re-alleges its answers to paragraphs 1 through 37 as though fully set forth herein.

39. Paragraph 39 is denied.

40. Paragraph 40 is denied.

41. Paragraph 41 is denied.

42. Paragraph 42 is denied.

43. Paragraph 43 is denied.

#### PRAYER FOR RELIEF

Defendant is not required to respond to Plaintiff's Prayer for Relief. However, to the extent Plaintiff's Prayer for Relief asserts any factual allegations, Defendant denies each and every allegation set forth in Plaintiff's Prayer for Relief.

#### AFFIRMATIVE DEFENSES

1. Plaintiff failed to state a claim for which relief can be granted as a matter of law.
2. All actions taken concerning Plaintiff were for legitimate, nondiscriminatory business reasons.
3. Assuming, arguendo, that discrimination occurred, Defendant did not know, nor should it have known, of the allegedly discriminatory conduct.
4. Assuming arguendo, Plaintiff's age was a motivating factor for any employment practice, Defendant would have taken the same action in the absence of Plaintiff's age.
5. Plaintiff's position change and termination were unrelated to her age.
6. Plaintiff's position change and termination occurred for legitimate non-discrimination reasons.

7. The position change and termination of Plaintiff were job related; specifically, Plaintiff's position was changed and she was terminated for unsatisfactory performance of the duties of her position(s).

8. Plaintiff has failed to mitigate her damages.

9. If Plaintiff is adjudged to be entitled to any recovery, then Defendant is entitled to an off-set for any compensation, including without limitation to, unemployment compensation, wages, and/or salaries received by Plaintiff.

10. Upon information and belief, any relief to which Plaintiff may be entitled to is barred by and/or limited by the after-acquired evidence doctrine.

11. Compensatory and punitive damages are not available under the ADEA.

12. Any acts or omissions attributed to Defendant in Plaintiff's Complaint were not willful in that Defendant did not know, or show reckless disregard for, whether its conduct violated the ADEA; thus, the applicable statute of limitations under the ADEA is two years and Plaintiff is not entitled to liquidated damages.

13. Plaintiff is not entitled to punitive damages because the alleged misconduct would be contrary to Defendant's good faith efforts to comply with the ADEA.

14. Plaintiff's damages are limited by any applicable statutory cap, including but not limited to, the statutory caps set forth in 42 U.S.C. § 1981(a).

15. Any equitable relief sought by Plaintiff is barred by the doctrines of waiver, estoppel, and/or laches.

16. Any equitable relief sought by Plaintiff is barred by the doctrine of unclean hands, as Plaintiff has misappropriated Defendant's trade secrets.

17. Prior to the termination of her employment, Plaintiff printed numerous documents from a computer at the store, including documents that contained Defendant's trade secrets, and other confidential and proprietary information belonging to Defendant.

18. During her tenure as store marketing manager, Plaintiff had access to Defendant's trade secrets and confidential and proprietary information. Upon information and belief, the documents she improperly took from the store included Defendant's marketing strategies, market research it had conducted, financial information, contracts with market research companies, and communications from Defendant's attorneys analyzing copyright and trademark issues.

19. This information was secret; it conferred a competitive advantage to Defendant; and Defendant took reasonable efforts to maintain its secrecy.

20. Plaintiff knowingly acquired this information by improper means, in breach of her duty to keep it confidential.

21. Pursuant to Fed. R. Civ. P. 11, all possible affirmative defenses may not have been alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the filing of Plaintiff's Complaint; therefore, Defendant reserves the right to amend its Answer to Plaintiff's Complaint to allege additional affirmative defenses, if subsequent investigation so warrants.

WHEREFORE, the Defendant respectfully requests that the Plaintiff's Complaint be dismissed, with attorneys' fees and costs thereto assessed to Plaintiff, and further relief as the court may deem just and proper.

DATED: April 2, 2020.

Respectfully submitted,  
BAKER, SKADDEN & LATHAM



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► DOW CLOSES AT 26,504.95, NASDAQ AT 8,164, AND S&P 500 AT 2,945.64 ..... **A3**



► JOBS ADDITIONS FOR MARCH REVISED DOWN FROM 196,000 TO 189,000 ..... **B5**



May 6, 2019

# Phoenix Finance

# Daily

COVERING DAILY EVENTS IN THE BUSINESS COMMUNITY IN GREATER PHOENIX AND AROUND THE GLOBE

## Pure Markets goes social

PHOENIX — A regional grocery chain and Phoenix staple, Pure Markets, unveiled a new management team and marketing strategy this week.

The newly-announced Vice President of Public Relations, Timothy Hightower, said, “Pure Markets has been at the forefront of the grocery industry in Phoenix for decades, and we intend to continue to lead.”

Hightower, 34, said that social media will be central to Pure Markets’ modernization efforts and innovative initiatives to expand its client base.

The 58-year old grocery chain plans to aggressively incorporate the use of social media into its consumer outreach efforts.

Pure Markets will require its employees to develop their own customer base. Employees will use social media to organize events at area stores, including cooking classes, wine tastings and singles nights. Employees will also be asked to organize civic involvement on behalf of the store.

Utilizing Facebook, Twitter, Foursquare, Groupon and Instagram will be a key part of their efforts.

Pure Markets is a regional grocery store chain concentrated in the Greater Phoenix area. Since its founding in 1961, Pure Markets has grown to include 30 stores throughout the region, and employs nearly 800 Arizonans.



## MARKET UPDATE

NEW YORK — Wall Street closed higher on Friday, reversing the two previous session’s losses after the release of strong labor market data. All three major stock indexes finished in the green. However, for the week, both the S&P 500 and Nasdaq Composite ended in positive territory while the Dow suffered a loss.



# Pure Markets announces store closings, layoffs as part of restructuring

announced ten store closings in Tempe, Glendale, Scottsdale, and Tatum Highlands. Good-year, 36, also announced the layoffs of 220 employees.

mer, Pure Markets has made social media the focal point of its consumer outreach efforts.

Goodyear said that employee use of social media to organize,

PHOENIX — On the heels of putting in place a new management team and marketing strategy seven months ago, Pure Markets has announced store closings and layoffs as part of its ongoing modernization and overhaul.

Sarah M. Goodyear, who has served as Vice President of Business Operations for the grocery store chain for seven months,

After noting the valuable contributions of all Pure Market employees past and present,

Goodyear said, “These changes represent the latest step in our efforts to broaden our appeal to a new generation of consumers.”

Since its new marketing initiatives were rolled out last sum-

“These changes represent the latest step in our efforts to broaden our appeal to a new generation of consumers.”

SARAH M. GOODYEAR

among other things, store events and civic involvement, both allows and requires increasingly efficient, modern and tech-savvy store operations.

Pure Markets is a regional grocery chain in the Greater Phoenix area. Founded in 1961, Pure Markets now operates 20 stores and employs 580 Arizonans.



Phoenix Finance

1000 Business Street Way  
Phoenix, AZ 54321

# GLENDALE SHOPPER

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**Upcoming Events in Glendale:**

- Town Fair, **Jan. 3-7**
- The Sweetest Festival, **Feb. 3-5**
- The Winter Antique Tractor & Engine Show, **Feb. 7-8**
- Glendale Folk & Heritage Festival, **Mar. 21-22**

## PURE MARKETS ANNOUNCES EMPLOYEE OF THE YEAR

Glendale resident Maria Capriotti was presented with Pure Markets' "Employee of the Year Award" yesterday.

In front of family, friends and colleagues at the local Glendale branch of Pure Markets, Mrs. Capriotti was honored for her excellent customer service as an employee in 2015. Her decades of employment at Pure Markets was also recognized.

Capriotti, 58, wife to Vincenzo, mother to five children and grandmother to 17, began her employment at Pure Markets at the age of 18. Although she started by bagging groceries, she has also worked the cash register, stocked the aisles, and provided deli counter service. Ms. Capriotti has received multiple promotions.

She worked her way up from the bottom, rising through the ranks to marketing manager



at the local Glendale branch of the store, where her responsibilities now include managing all in-store advertising, integrating in-store marketing with company-led advertising, and leading store outreach efforts to the local community.

Capriotti was born and raised in Glendale. She graduated

from Glendale High, and has been active in the community for many years. In addition to serving as a PTO member, a community watch leader, and a Sunday school teacher, Capriotti recently organized Pure Markets' relief activities for senior citizens affected by a devastating dust storm.

## THE SEDONA CONFERENCE® ANNOUNCES ANNUAL CONFERENCE ON PATENT

The Phoenix-based Sedona Conference® will hold its 16th annual conference on patent litigation in Washington, D.C., on October 24-25, 2016.

The conference will focus on

how patent owners are re-orienting their strategies for patent protection to reflect global realities.

Changes in the legal landscape, both in the U.S. and abroad, are giving rise to both new risks and new opportuni-

ties for patent enforcement.

The Sedona Conference® is a nonprofit, 501(c)(3) research and educational institute dedicated to the advanced study of law and policy.