

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

CHRISTOPHER PEÑA,)
)
 Plaintiff,)
)
 v.)
)
 BURGER KING CORPORATION; and)
 DOES 1 to 10, inclusive)
)
 Defendants.)
)
 _____)

Civil Action No. _____

COMPLAINT
JURY TRIAL DEMANDED

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COMPLAINT

Plaintiff Christopher Peña (“Plaintiff”) files this Complaint against Defendants Burger King Corporation, and Does 1 to 10, inclusive (collectively, “Defendants”), and alleges the following:

JURISDICTION AND PRELIMINARY STATEMENT

1. This action is brought under Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* (“ADA”). This action stems from Defendants’ termination of Plaintiff’s employment as a Burger King district manager on September 19, 2011 because he is infected with the human immunodeficiency virus (“HIV”).

2. This Court has jurisdiction over the matter under 42 U.S.C. § 12117 and 28 U.S.C. § 1331 and 29 U.S.C. § 1332. At all times relevant to this Complaint, the Defendants comprised a single employer employing in excess of fifteen employees.

3. Defendants hired Plaintiff as an assistant manager trainee in April 2004. Although Plaintiff performed satisfactorily for the entire period of his employment, Defendants terminated Plaintiff's employment on September 19, 2011.

4. In this action, Plaintiff seeks compensatory damages, punitive damages, and costs and reasonable attorneys' fees associated with this action.

VENUE

5. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the unlawful employment practices complained of occurred in this judicial district and division. Venue is also proper in this Court under 28 U.S.C. § 1391(b) because one or more of the Defendants reside in this judicial district and division.

PARTIES

6. Plaintiff Christopher Peña is an individual residing in Virginia Beach, Virginia. At all times relevant to this Complaint, Plaintiff has been a person living with HIV and a person with a disability within the meaning of the ADA.

7. Defendant Burger King Corporation, is a corporation incorporated under the laws of Florida, with its principal place of business at 5505 Blue Lagoon Drive, Miami, Florida 33126. Burger King franchises, leases, and operates fast food hamburger restaurants under the Burger King brand in Virginia.

8. Upon information and belief, Defendant Burger King Corporation is a covered entity prohibited from discriminating against individuals with disabilities within the meaning of the ADA.

9. This action concerns Burger King Restaurants in Virginia that Defendant leases to or from other entities.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, and the true involvement of Defendants Does 1 to 10 are presently unknown to Plaintiff, who therefore sues each of these Defendants by such fictitious names. Upon ascertaining the true identity of a Doe Defendant, Plaintiff will amend this complaint, seeking leave to do so, by inserting the true name in lieu of the fictitious name. The Plaintiff is informed and believes, and on the basis of such information and belief alleges, that each Doe Defendant is in some manner responsible for the acts and omissions alleged here.

FACTUAL ALLEGATIONS

11. Plaintiff incorporates the allegations of the preceding paragraphs as though fully set forth here.

12. On or about April 2011, Plaintiff was diagnosed as having HIV, the virus that causes Acquired Immune Deficiency Syndrome (“AIDS”).

13. Plaintiff has a physical impairment, as well as a record of physical impairment, that substantially limits one or more of his major life activities, such that he is a person with a disability within the meaning of the ADA.

14. Additionally, Defendants regard or regarded Plaintiff as having a physical impairment that substantially limits one or more of his major life activities, such that he is a person with a disability within the meaning of the ADA.

15. In or about April 2004, Defendants hired Plaintiff as a Burger King assistant manager trainee.

16. From April 2004 to approximately September 19, 2011, Plaintiff was the district manager for Defendants' restaurants doing business in Virginia Beach, Virginia and Chesapeake, Virginia.

17. Plaintiff consistently performed all the essential functions, duties, and responsibilities of his position in a satisfactory manner throughout his employment with Defendants.

18. On or about June 2011, Plaintiff disclosed to Defendants that he was HIV-positive.

19. Subsequent to June 2011, Defendants subjected Plaintiff to differential treatment in the terms and conditions of his employment because of his disability.

20. On or about September 19, 2011, Defendants terminated Plaintiff's employment.

21. Plaintiff was told by Defendants that Plaintiff was being terminated for performance.

22. Defendants' stated reason for terminating Plaintiff was a pretext for the Defendants' unlawful discrimination based on Plaintiff's disability.

23. As a result of his termination, Plaintiff suffered severe emotional distress, loss of wages, loss of bonuses, loss of health insurance, and loss of other employee benefits.

24. On or about October 5, 2011, Plaintiff filed a timely charge of discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC") alleging that his termination constituted disability discrimination and violated federal law.

25. On or about February 2, 2012, the EEOC issued Plaintiff Notice of Right to Sue Defendants in connection with his charge.

26. Plaintiff has exhausted the administrative remedies available to him.

COUNT I

VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

(Unlawful Disability Discrimination)

27. Plaintiff incorporates the allegations of the preceding paragraphs as though fully set forth here.

28. Title I of the ADA, 42 U.S.C. §§ 12111-12117, prohibits covered entities from discriminating against otherwise qualified people with disabilities in the terms,

conditions or privileges of employment. This prohibition similarly protects people whom covered entities regard as disabled.

29. At all times relevant to this Complaint, Plaintiff was capable of safely performing all the essential functions of the position of district manager for Defendants.

30. At the time of his termination, Plaintiff was performing well in his position.

31. Defendants subjected Plaintiff to differential treatment in the terms and conditions of his employment because of his disability.

32. Defendants violated the ADA by terminating Plaintiff's employment on the basis of his disability.

33. Plaintiff was damaged as a result of Defendants' acts. Plaintiff is entitled to lost wages, lost future wages, lost benefits, compensatory relief for emotional distress, and all compensatory damages and punitive damages as authorized by the ADA, and other relief as set forth more fully in the Prayer for Relief below.

34. Defendants' actions were willful, malicious, fraudulent, and oppressive, and were committed with the wrongful intent to injure Plaintiff and in conscious disregard of Plaintiff's rights.

JURY DEMANDED

35. Plaintiff requests a trial by jury of all matters to which he is entitled by law.

PRAYER FOR RELIEF

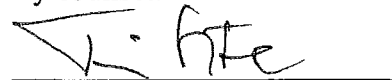
WHEREFORE, Plaintiff requests the following relief:

- a) a trial by jury;
- b) a declaratory judgment that Defendants have willfully violated Plaintiff's rights under Title I of the ADA;
- c) an injunction barring Defendants from continuing to violate the ADA;
- d) that Defendants be ordered to reinstate Plaintiff, and pay to Plaintiff lost wages, lost future wages, lost benefits, and other compensatory damages and punitive damages as authorized by the ADA;
- e) that Defendants be ordered to pay the costs and reasonable attorneys' fees incurred as a result of Plaintiff's bringing of this action; and
- f) for such other and further relief as this Court deems just and proper.

Respectfully Submitted,

CHRISTOPHER PEÑA

By counsel:



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