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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS DIVISION**

ROBERT G. HICKMAN,

Plaintiff,

vs.

**DONNA CURRY INVESTMENTS, a Nevada
limited-liability company fka DONNA CURRY
INVESTMENTS, a Nevada corporation, dba
Subway; DOCTOR'S ASSOCIATES, a Florida
corporation, dba Subway; DONNA J. CURRY,
an individual; DOE DEFENDANTS I TO V,
individuals; ROE ENTITIES I TO V,**

Defendants.

CIVIL ACTION FILE NO.:

**COMPLAINT
JURY DEMAND**

COMPLAINT

Plaintiff Robert G. Hickman (“Plaintiff” or “Mr. Hickman”) files this Complaint against Defendants Donna Curry Investments, LLC, formerly known as Donna Curry Investments, Inc. and doing business as Subway; Doctor’s Associates, Inc., also doing business as Subway; Donna J. Curry; John Doe Defendants I to V; and Roe Entities I to V (collectively, “Defendants”), and alleges the following:

JURISDICTION AND PRELIMINARY STATEMENT

1. This is an action brought under Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* (“the ADA”), the Nevada Employment Practices Act, Nev. Rev. Stat. § 613.330(1) (“the NEPA”), and the common law for redress of unlawful discrimination on the basis of disability. As more fully explained below, this action stems from Defendants’ termination of Mr. Hickman’s employment as a Subway restaurant manager on February 4, 2005 because he is infected with the human immunodeficiency virus (“HIV”). This Court has jurisdiction of the subject matter of this case pursuant to 28 U.S.C. §§ 1331, 1343 and 1367. This action is authorized by section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference sections 706(f)(1) and 706(f)(3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-5(f)(1) and (3), and section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. This Court has supplemental jurisdiction over Plaintiff’s state statutory and common law claims, pursuant to 28 U.S.C. § 1367, because those claims are so related to Plaintiff’s ADA claim that they form part of the same case or controversy.

2. Defendants hired Mr. Hickman as a Subway restaurant manager on November 3,

2004. As a restaurant manager, Mr. Hickman's responsibilities included supervising and training staff, managing restaurant operations, and food preparation. Although Mr. Hickman performed the functions of his position satisfactorily for the entire period of his employment by Defendants, Defendants abruptly terminated Mr. Hickman's employment on February 4, 2005, the day after they learned that Mr. Hickman has HIV.

3. By terminating Mr. Hickman, Defendants gave credence to irrational fears concerning people living with HIV, ignored well-established scientific facts about transmission of HIV, and flouted the mandates of federal and state law. Congress enacted the ADA, and the Nevada legislature enacted the NEPA, to eliminate this type of irrational discrimination and stigma.

4. In this action, Mr. Hickman seeks past lost wages, bonuses, and benefits; future lost wages, bonuses, and benefits; compensation for the severe distress and stigmatization to which he was subjected; punitive damages for Defendants' outrageous conduct and willful or reckless disregard of his protected rights; and costs and reasonable attorneys' fees associated with this action.

VENUE

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

PARTIES

6. Plaintiff Robert G. Hickman currently resides in Milford, Indiana. At all times

relevant hereto, Mr. Hickman has been a person living with HIV and a person with a disability within the meaning of the ADA and the NEPA.

7. Upon information and belief, Defendant Donna Curry Investments, LLC is a Nevada company formerly known as Donna Curry Investments, a Nevada corporation, and is doing business as Subway in this state and in this judicial district.

8. Upon information and belief, Donna Curry Investments, a Nevada corporation, directly employed the Plaintiff and was converted to Donna Curry Investments, a limited-liability company, on April 22, 2005.

9. Upon information and belief, Donna Curry Investments, LLC is a successor in interest or otherwise legally responsible for the acts, omissions, debts, and obligations of Donna Curry Investments, the Nevada corporation, with respect to the claims asserted herein. As used within this Complaint, “Defendant Donna Curry Investments” refers to Donna Curry Investments, the Nevada corporation; Donna Curry Investments, the limited-liability company; and any other successors in interest or other individuals and entities legally responsible for the acts, omissions, debts, and obligations of Donna Curry Investments, the Nevada corporation and Donna Curry Investments, the limited-liability company.

10. Upon information and belief, Defendant Donna Curry Investments owns and operates Subway franchise restaurants in Nevada.

11. Upon information and belief, Defendant Donna Curry Investments engages in an industry affecting commerce and has had 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year.

12. Upon information and belief, Defendant Donna Curry Investments is a “covered entity” prohibited from discriminating against individuals with disabilities within the meaning of the ADA.

13. Defendant Donna Curry Investments is subject to the jurisdiction of this Court.

14. Upon information and belief, Defendant Donna J. Curry (“Defendant Curry”), an individual, is the manager of Donna Curry Investments, LLC.

15. Upon information and belief, Defendant Curry is, or was during the period of Plaintiff’s employment, the individual owner, shareholder, and President of Donna Curry Investments, the Nevada corporation.

16. Defendant Curry is subject to the jurisdiction of this Court.

17. Defendant Doctor’s Associates is a Florida corporation also doing business as Subway in this state and in this judicial district.

18. Upon information and belief, Defendant Doctor’s Associates is the franchisor of Subway restaurants, including the restaurants where Plaintiff was employed.

19. Upon information and belief, Defendant Doctor’s Associates employs Defendant Curry as its employee and/or agent to develop franchise enterprises in Nevada.

20. Upon information and belief, with respect to Mr. Hickman’s employment, Defendants Donna Curry Investments and Doctor’s Associates acted as a single entity or, alternatively, as joint employers or, alternatively, Defendant Donna Curry Investments and/or Defendant Curry acted as the agents of Defendant Doctor’s Associates, and Doctor’s Associates should be held liable for the discriminatory acts and extreme and outrageous conduct alleged in

this Complaint.

21. Upon information and belief, Defendant Doctor's Associates engages in an industry affecting commerce and has had 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year.

22. Upon information and belief, Defendant Doctor's Associates is a "covered entity" prohibited from discriminating against individuals with disabilities within the meaning of the ADA.

23. Defendant Doctor's Associates is subject to the jurisdiction of this Court.

24. Upon information and belief, John Doe Defendants I to V and Roe Entities I to V are additional participants in the conduct alleged in this Complaint who bear liability for the discriminatory acts and extreme and outrageous conduct alleged in this Complaint and whose identities and/or capacities are not yet known to Plaintiff. Upon learning the identities of these individuals and/or entities, Plaintiff will seek leave to amend to substitute their true names in place of these designated Doe and Roe defendants.

FACTS

25. Mr. Hickman realleges paragraphs 1 through 24 of this Complaint as if fully set forth herein.

26. Mr. Hickman is infected with HIV, the virus that causes Acquired Immune Deficiency Syndrome ("AIDS").

27. Mr. Hickman 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 and the NEPA.

28. Additionally, Defendants regard or regarded Mr. Hickman 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 and the NEPA.

29. On or about November 3, 2004, Defendants hired Mr. Hickman as a Subway restaurant manager.

30. From November 4, 2004 to approximately December 11, 2004, Mr. Hickman worked out of two of Defendants' restaurants doing business in Nevada, one in Henderson and the other in the Southern Highlands area of Las Vegas.

31. Commencing on or about December 12, 2004, Mr. Hickman worked out of Defendants' restaurant doing business at 7425 South Durango Drive, Las Vegas, Nevada.

32. Mr. Hickman consistently performed all the essential functions, duties and responsibilities of his position in a satisfactory manner throughout the period of his employment with Defendants.

33. In or around December 2004, Mr. Hickman received a pay raise from \$450.00 per week to \$500.00 per week.

34. Defendants gave Mr. Hickman a pay raise as a result of his positive performance.

35. On or about February 3, 2005, Mr. Hickman filled out an application for employer-based health insurance.

36. The insurance application required Mr. Hickman to answer a question regarding whether he had ever been diagnosed with a chronic condition, including HIV/AIDS.

37. On or about February 3, 2005, Mr. Hickman disclosed to Defendant Curry and his direct supervisor, Stephanie Sands, that he was HIV-positive.

38. On or about February 4, 2005, Defendants terminated Mr. Hickman's employment.

39. At that time, Defendant Curry informed Mr. Hickman that she was terminating him because he has HIV.

40. At that time, Defendant Curry falsely told Mr. Hickman that, because he has HIV, he was a danger to customers.

41. Despite Defendants' apparent assumptions to the contrary, according to the federal Centers for Disease Control and Prevention, there is no known risk of HIV transmission to co-workers or consumers in food preparation.

42. Defendants' decision to terminate Mr. Hickman was not based on a reasonable medical judgment relying on either the most current medical knowledge or the best available objective evidence.

43. Upon information and belief, prior to terminating Mr. Hickman's employment, Defendants did not conduct an individualized assessment of Mr. Hickman's ability safely to perform the essential functions of the job of restaurant manager.

44. Prior to terminating Mr. Hickman's employment, Defendants did not engage in an interactive process with Mr. Hickman, as required by the ADA and the NEPA.

45. Upon information and belief, prior to terminating Mr. Hickman's employment, Defendants did not explore any accommodations that would have reduced or eliminated the

perceived threat that Defendants believed Mr. Hickman posed because of his HIV status.

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

47. On or about February 16, 2005, Mr. Hickman filed a timely charge of discrimination with the U.S. Equal Employment Opportunity Commission (“the EEOC”) and the Nevada Equal Rights Commission (“the NERC”) alleging that his termination constituted disability discrimination and violated federal and state law.

48. On or about November 8, 2005, the EEOC issued to Mr. Hickman Notice of Right to Sue Defendants Donna Curry Investments and Doctor’s Associates in connection with his charge.

49. Mr. Hickman has exhausted the administrative remedies available to him. All conditions precedent to the institution of this suit have been fulfilled.

FIRST CLAIM FOR RELIEF
AGAINST DEFENDANTS DONNA CURRY INVESTMENTS
AND DOCTOR’S ASSOCIATES:
ADA - DISABILITY DISCRIMINATION

50. Mr. Hickman realleges paragraphs 1 through 49 of his Complaint as if fully set forth herein.

51. 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.

52. At all times relevant to this Complaint, Mr. Hickman was capable of safely performing all the essential functions of the position of restaurant manager for Defendants, with or without reasonable accommodations.

53. At the time of his termination, Mr. Hickman was meeting Defendants' legitimate expectations as an employee.

54. Defendants Donna Curry Investments and Doctor's Associates violated the ADA by terminating Mr. Hickman's employment on the basis of his disability.

55. Defendants Donna Curry Investments and Doctor's Associates violated the ADA by terminating Mr. Hickman's employment because of the unjustified perception that Mr. Hickman's disability rendered him unqualified to perform his duties.

56. Defendants Donna Curry Investments and Doctor's Associates violated the ADA by failing to make an individualized assessment or engage in an interactive process prior to terminating Mr. Hickman's employment.

57. Defendants Donna Curry Investments and Doctor's Associates violated the ADA by failing to consider whether the perceived threat allegedly posed by Mr. Hickman could be eliminated or reduced by reasonable accommodation.

58. Defendants Donna Curry Investments and Doctor's Associates violated the ADA by denying Mr. Hickman such accommodation and discriminating against him on the basis of his HIV status.

59. Defendants Donna Curry Investments and Doctor's Associates acted with malice or with reckless indifference to Mr. Hickman's protected rights.

60. Mr. Hickman was severely damaged as a result of Defendants' actions, losing wages and benefits, and suffering emotional pain, mental anguish, stigma, and loss of professional standing associated with Defendants' discriminatory treatment of him. He is entitled to lost wages, lost future wages, lost benefits, compensatory damages and punitive damages as authorized by the ADA, and the other relief hereinafter requested.

SECOND CLAIM FOR RELIEF
AGAINST DEFENDANTS DONNA CURRY INVESTMENTS
AND DOCTOR'S ASSOCIATES:
NEPA – DISABILITY DISCRIMINATION

61. Mr. Hickman realleges paragraphs 1 through 60 of his Complaint as if fully set forth herein.

62. The NEPA, Nev. Rev. Stat. § 613.330(1), prohibits employers from discharging any person or discriminating against any person with respect to his compensation, terms, conditions or privileges of employment because of his disability.

63. By discharging and otherwise discriminating against Mr. Hickman on the basis of his disability, Defendants Donna Curry Investments and Doctor's Associates violated the NEPA, Nev. Rev. Stat. § 613.330(1).

64. As a result of Defendants' violation of Nevada law, Mr. Hickman is entitled to damages equal to the amount of lost wages and benefits and the other relief hereinafter requested.

THIRD CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS:
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

65. Mr. Hickman realleges paragraphs 1 through 64 of his Complaint as if fully set forth herein.

66. By terminating Mr. Hickman's employment on the basis of HIV status, Defendants engaged in extreme and outrageous conduct.

67. Defendants acted with intent to cause Mr. Hickman emotional distress or with reckless disregard for the likelihood that their actions would cause Mr. Hickman emotional distress.

68. Mr. Hickman suffered severe emotional distress as a result of Defendants' treatment of him.

69. As a result of Defendants' extreme and outrageous conduct, Mr. Hickman is entitled to compensatory and punitive damages and the other relief hereinafter requested.

JURY DEMAND

70. Mr. Hickman requests a trial by jury of all matters to which he is entitled by law.

WHEREFORE, Mr. Hickman requests the following relief:

- a) a trial by jury;
- b) that Defendants Donna Curry Investments and Doctor's Associates be ordered to pay to Mr. Hickman lost wages, lost future wages, lost benefits, compensatory damages and punitive damages as authorized by the ADA and/or the NEPA;

- c) that Defendants be ordered to pay to Mr. Hickman compensatory damages and punitive damages for their extreme and outrageous conduct as authorized by Nevada law;
- d) that Defendants Donna Curry Investments and Doctor's Associates be ordered to pay the costs and reasonable attorneys' fees incurred as a result of Mr. Hickman's bringing of this action; and
- e) for such other and further relief as this Court deems just and proper.

Respectfully submitted, this 2nd day of February, 2006

s/ Caren Jenkins
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