



4. Defendant was Plaintiff's employer as that term is defined in the OCRA, the ADA and Title VII.

#### **JURISDICTION AND VENUE**

5. Plaintiff realleges and reavers each and every allegation contained in Paragraphs One (1) through Four (4) as if fully rewritten herein.

6. Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (hereinafter "EEOC").

7. The EEOC issued a Notice of Right to Sue Letter to Plaintiff on or about September 12, 2011, a copy of which is attached hereto as Exhibit "A" and made a part hereof.

8. This Court has subject matter jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. Section 1331 because the dispute involves interpretation of federal laws.

9. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. Section 1367 because they are so related to the federal claims that they form part of the same case or controversy.

10. This Court has personal jurisdiction over Defendant.

11. This matter is properly venued in this Court pursuant to 28 U.S.C. Section 1391 because the subject matter of the claims occurred in Cleveland, Ohio.

### STATEMENT OF FACTS

12. Plaintiff realleges and reavers each and every allegation contained in Paragraphs One (1) through Eleven (11) of this Complaint as if fully rewritten herein.

13. Plaintiff was a regular limited term employee in the position of Service Representative at Defendant's facility located at 45 Erieview Plaza, 10<sup>th</sup> Floor, Cleveland, Ohio 44114.

14. This was Plaintiff's second term of employment with Defendant.

15. Plaintiff's employment was governed by a Collective Bargaining Agreement between Defendant and the Communication Workers of America, District 4.

16. Plaintiff's position involved customer service and sales.

17. During Plaintiff's initial term of employment with Defendant, he had been known as Jason Cabot.

18. Plaintiff and his same sex partner had been married in another state which recognized same sex marriages.

19. Upon returning to Ohio, Plaintiff legally changed his name from Jason Cabot to Jason Koren to take on his partner's last name.

20. Plaintiff was HIV positive during the course of his employment with Defendant and has been diagnosed with AIDS.

21. Plaintiff had advised his co-workers of his status as being HIV positive and being diagnosed with AIDS in 2006 during his first stint with Defendant.

22. Defendant is a qualified individual with a disability for purposes of the OCRA and the ADA.

23. During the course of his employment, Plaintiff was subjected to harassment and degrading behavior because of his disability and/or his failure to conform to gender stereotypes by entering into a same sex marriage.

24. During his employment, a manager in his department repeatedly referred to Plaintiff as Jason Cabot rather than Jason Koren.

25. This employee specifically stated that she would never recognize Plaintiff's marriage or refer to him by his legally changed name.

26. In the Fall of 2009, Plaintiff missed work to travel out of state to visit his father on his death bed and attend his funeral.

27. Pursuant to the Collective Bargaining Agreement, Plaintiff was entitled to funeral leave for at least a part of these absences.

28. The same HR employee who refused to recognize Plaintiff's same sex marriage, refused to credit him with funeral time.

29. Defendant eventually terminated Plaintiff's employment because of absenteeism for absences that should have been excused leave under the Funeral Leave Policy.

30. Plaintiff believes that the cited attendance problems were a pretext for discriminatory animus against him because of his disability and his failure to conform to general stereotypes relating to his same sex marriage.

31. As a direct and proximate result of Plaintiff's termination, he has suffered lost wages, lost benefits, emotional distress and other damages in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00).

**COUNT ONE  
AMERICANS WITH DISABILITIES ACT**

32. Plaintiff realleges and reavers each and every allegation contained in Paragraphs One (1) through Thirty-One (31) of this Complaint as if fully rewritten herein.

33. Plaintiff has a disability, is perceived as having a disability and/or has a record of having a disability as those terms are defined in the ADA.

34. Defendant terminated and/or refused to employ Plaintiff because of Plaintiff's disability.

35. The foregoing conduct violates the provisions of the ADA.

36. As a direct and proximate result of Plaintiff's termination, he has suffered lost wages, lost benefits, emotional distress and other damages in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00).

**COUNT TWO  
THE OHIO CIVIL RIGHTS ACT-DISABILITY DISCRIMINATION**

37. Plaintiff realleges and reavers each and every allegation contained in Paragraphs One (1) through Thirty Six (36) of this Complaint as if fully rewritten herein.

38. Plaintiff has a disability, is perceived as having a disability and/or has a record of having a disability as those terms are defined in the OCRA.

39. Defendant terminated and/or refused to employ Plaintiff because of Plaintiff's disability.

40. The foregoing conduct violates the provisions of the OCRA.

41. As a direct and proximate result of Plaintiff's termination, he has suffered lost wages, lost benefits, emotional distress and other damages in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00).

**COUNT THREE  
TITLE VII**

42. Plaintiff realleges and reavers each and every allegation contained in Paragraphs One (1) through Forty One (41) of this Complaint as if fully rewritten herein.

43. Defendant has discriminated against Plaintiff because Plaintiff has failed to conform to gender stereotypes as a result of having entered into a same sex marriage.

44. Said discriminatory conduct violates Title VII.

45. As a direct and proximate result of Plaintiff's termination, he has suffered lost wages, lost benefits, emotional distress and other damages in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00).

**COUNT FOUR  
OHIO CIVIL RIGHTS ACT – GENDER DISCRIMINATION**

46. Plaintiff realleges and reavers each and every allegation contained in Paragraphs One (1) through Forty Five (45) of this Complaint as if fully rewritten herein.

47. Defendant has discriminated against Plaintiff because Plaintiff has failed to conform to general stereotypes as a result of having entered into a same sex marriage.

48. Said discriminatory conduct violates the OCRA.

49. As a direct and proximate result of Plaintiff's termination, he has suffered lost wages, lost benefits, emotional distress and other damages in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00).

WHEREFORE, for the foregoing reasons, Plaintiff requests the following relief:

- A. Compensatory damages in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00);
- B. Punitive damages in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00);
- C. Attorneys' fees and costs as provided for under the law;
- D. Pre- and post-judgment interest; and
- E. Such other and further relief as this Honorable Court may deem Plaintiff to be entitled.

Respectf

ully submitted,

/s/Richard Selby

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### **JURY DEMAND**

Now comes Plaintiff, by and through his counsel, and demands that this case be tried before a jury of the maximum number allowed by law.

/s/Richard Selby

Richard N. Selby, II, Esq. (#0059996)