

FILED  
COURT OF CLAIMS  
OF OHIO

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IN THE COURT OF CLAIMS OF OHIO

STEVEN LISS, )  
4450 Donna Drive )  
Richmond Heights, OH 44143 )  
  
Plaintiff, )  
  
vs. )  
  
CLEVELAND STATE UNIVERSITY, )  
2121 Euclid Avenue )  
Cleveland, Ohio 44115, )  
  
Defendant. )

Case No.:

JUDGE

2013-00139

COMPLAINT

**ORIGINAL**

JURISDICTION & VENUE

1. Plaintiff Steven Liss (“Liss”) brings this action for damages against Defendant Cleveland State University (“CSU”) for violations of Ohio Rev. Code § 4112.02(A) (Age Discrimination); and Ohio Rev. Code § 4112.02(I) (Retaliation).
2. This action also asserts claims against CSU for violations of 29 U.S.C. § 2611 *et seq.* (Family and Medical Leave Act) and 29 U.S.C. § 621 *et seq.* (Age Discrimination in Employment Act, as amended).<sup>1</sup>
3. All administrative prerequisites have been met.
4. Liss is a citizen of the United States and a resident of Cuyahoga County, Ohio.
5. CSU is a state university located in Cuyahoga County, Ohio, and is an agent or instrumentality of the State of Ohio.

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<sup>1</sup> Liss will, upon amendment of the complaint at a later date, assert claims under 42 U.S.C. § 12101 *et seq.* (Americans with Disabilities Act, as amended). This claim is hereby reserved and not asserted at this time but subject to addition by way of an amendment to this Complaint once the claim is perfected following the issuance of a “Notice Right-to-Sue” by the U.S. Equal Employment Opportunity Commission.

**ON COMPUTER**

6. This Court has original jurisdiction of the claims asserted herein pursuant to Ohio Rev. Code § 2743.02. This matter is timely filed, and jurisdiction and venue are proper.

### **PARTIES**

7. Liss was employed by CSU, until his termination on or around September 5, 2012.
8. Liss is a “person,” “individual” and “employee” within the meaning of Ohio Rev. Code § 4112 *et seq*, 29 U.S.C. § 2611 *et seq*, and 29 U.S.C. § 621 *et seq*.
9. CSU is a “person,” an “individual” and an “employer” within the meaning of Ohio Rev. Code § 4112 *et seq*, 29 U.S.C. § 2611 *et seq*, and 29 U.S.C. § 621 *et seq*.

### **FIRST CAUSE OF ACTION** **(Age Discrimination in Violation of O.R.C. § 4112 and ADEA)**

10. Liss incorporates by reference the previous paragraphs as if fully re-alleged herein.
11. Liss is an individual who is over the age of 40 and was so at all times relevant to the activities which are the subject of this Complaint.
12. Liss was qualified for the position(s) in which he was employed by CSU and the positions for which he applied, was considered, or was eligible.
13. Liss successfully performed the duties and responsibilities of the position he held.
14. On or around September 5, 2012, CSU terminated Liss from his employment because of his age.
15. CSU refused to promote, reinstate, rehire, transfer or reassign Liss for available positions for which he was qualified.
16. CSU did not terminate Liss’s employment for any reasons related to his qualifications, work performance, behavior, or adherence to policy or procedure.

17. CSU replaced Liss with a substantially younger employee or employees, and promoted and retained substantially younger employees in positions for which Liss was more qualified.
18. CSU has a pattern and practice of making employment decisions, such as hiring, promotion, transfer and termination decisions, on the basis of age.
19. CSU discriminated against Liss on the basis of age with respect to the terms, conditions and privileges of employment in violation of Ohio Rev. Code § 4112 *et seq.* and 29 U.S.C. § 621 *et seq.*, including by: making age-related comments; denying him promotional opportunities given to substantially younger candidates; subjecting him and older employees to unfair scrutiny, pay and discipline; terminating his employment; retaining, hiring, and promoting substantially younger employees; and refusing to rehire, recall, transfer or reassign Liss to his former position or to other open positions for which he was qualified.
20. As a direct and proximate result of CSU's unlawful conduct, Liss suffered and will continue to suffer economic and non-economic damages, including but not limited to pain and suffering, the loss of salary and benefits, and other privileges and conditions of employment.
21. CSU's discriminatory actions against Liss in violation of the ADEA and Ohio Rev. Code §§ 4112.02(A) and (N) were willful, in bad faith, conducted with malicious purpose, or conducted in a wanton or reckless manner. CSU is liable for past and future economic and non-economic compensatory pursuant to Ohio Rev. Code § 4112.99 and 29 U.S.C. §

626(b), liquidated damages,<sup>2</sup> attorneys' fees and costs,<sup>3</sup> and any other legal or equitable relief that this Court deems appropriate.

**SECOND CAUSE OF ACTION**  
**(Retaliation in Violation of O.R.C. § 4112 and ADEA)**

22. Liss incorporates by reference the previous paragraphs as if fully re-alleged herein.
23. Liss engaged in protected activity by complaining of discrimination and harassment on the basis of age and disability to CSU.
24. CSU failed to take prompt, remedial, and appropriate steps to address the unlawful discriminatory treatment of Liss and older workers.
25. CSU retaliated against Liss because he opposed discriminatory conduct in violation of Ohio Rev. Code § 4112 *et seq.* and 29 U.S.C. § 623(d), including by: unfairly changing the terms, conditions and privileges of employment; subjecting to unfair scrutiny, pay and discipline; denying him promotional opportunities given to candidates who did not engage in protected activity; terminating his employment; retaining, hiring, and promoting employees who did not engage in protected activity; and refusing to rehire, recall, transfer or reassign Liss to his former position or to other open positions for which he was qualified.
26. As a direct and proximate result of CSU's unlawful conduct, Liss suffered and will continue to suffer economic and non-economic damages, including but not limited to

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<sup>2</sup> 29 U.S.C. § 626(b).

<sup>3</sup> 29 U.S.C. § 626(b), *incorporating* 29 U.S.C. § 216(b) ("The court in such action **shall**, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.") (emphasis added). Additionally, notwithstanding *Drain v. Kosydar*, Franklin App. 79AP-78, 1979 Ohio App. LEXIS 10929 (10th Dist., July 31, 1979); a defendant may be liable for the plaintiff's attorney's fees and costs regardless of statutory authority upon a finding of bad-faith, malicious purpose, or wanton and reckless behavior. See *Sturm v. Sturm*, 63 Ohio St. 3d 671, 675 (1992), *citing Sorin v. Board of Education*, 46 Ohio St. 2d 177, 183 (1976).

pain and suffering, the loss of salary and benefits, and other privileges and conditions of employment.

27. CSU's discriminatory actions against Liss in violation of Ohio Rev. Code §§ 4112.02(I) and 29 U.S.C. § 623 were willful, in bad faith, conducted with malicious purpose, or conducted in a wanton or reckless manner. CSU is liable for past and future economic and non-economic compensatory pursuant to Ohio Rev. Code § 4112.99 and 29 U.S.C. § 626(b), liquidated damages,<sup>4</sup> attorneys' fees and costs,<sup>5</sup> and any other legal or equitable relief that this Court deems appropriate.

**THIRD CAUSE OF ACTION**  
**(FMLA Retaliation)**

28. Liss incorporates by reference the previous paragraphs as if fully re-alleged herein.
29. During Liss's employment, a coworker with serious health conditions notified CSU of his need for leave to treat his conditions.
30. Liss engaged in protected activity by opposing and complaining of discrimination, interference, and retaliation against the individual who exercised or attempted to exercise rights to leave under the FMLA, 29 U.S.C. §§ 2611, *et seq.*
31. CSU failed to take prompt, remedial, and appropriate steps to address the unlawful discrimination, interference, and retaliation.
32. CSU retaliated against Liss because he opposed and complained of discrimination, interference and retaliation against an individual who exercised or attempted to exercise FMLA rights, in violation of 29 U.S.C. § 2695; including by: unfairly changing the terms, conditions and privileges of employment; subjecting him to unfair scrutiny, pay

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<sup>4</sup> 29 U.S.C. § 626(b).

<sup>5</sup> See Footnote 3, *supra*.

and discipline; terminating his employment; retaining, hiring, and promoting employees who did not engage in protected activity; and refusing to rehire, recall, transfer or reassign Liss to his former position or to other open positions for which he was qualified.

33. As a direct and proximate result of CSU's unlawful conduct, Liss suffered and will continue to suffer economic and non-economic damages, including but not limited to pain and suffering, the loss of salary and benefits, and other privileges and conditions of employment.
34. CSU's discriminatory actions against Liss in violation of FMLA, 29 U.S.C. § 2615 *et seq.*, were willful, in bad faith, conducted with malicious purpose, or conducted in a wanton or reckless manner. CSU is liable under 29 U.S.C. § 2617 for interest on the amount of losses described in the preceding Paragraph, liquidated damages, all fees and costs including but not limited to reasonable attorney's fees,<sup>6</sup> expert fees, and costs, and any equitable relief that this Court deems appropriate including but not limited to front pay, employment, reinstatement, and promotion.

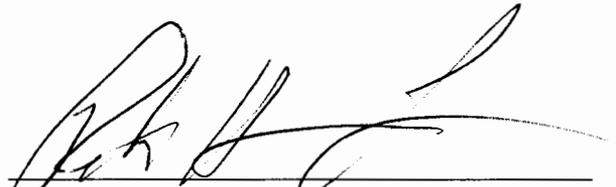
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<sup>6</sup> 29 U.S.C. § 2617(a)(3) ("The court in such an action **shall**, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.") (emphasis added).

**CONCLUSION**

Plaintiff Steven Liss seeks an amount in excess of \$25,000 to fully, fairly and justly compensate him for injury, damage and loss, and respectfully prays that this Court enter judgment in his favor and award him past and future economic and non-economic compensatory damages, fringe benefits, consequential damages, incidental damages, liquidated damages, interest, attorneys' fees, all fees and costs, and any additional equitable relief that it deems appropriate, including but not limited to back pay, front pay, employment, reinstatement and promotion.

Respectfully submitted,



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*Attorneys for Plaintiff Steven Liss*



THORMAN HARDIN-LEVINE

2013-00139

March 1, 2013

*Via Overnight UPS Delivery*

The Ohio Judicial Center  
Court of Claims of Ohio  
65 South Front Street  
Third Floor  
Columbus, OH 43215

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COURT OF CLAIMS  
OF OHIO  
2013 MAR -4 AM 10:36

Re: *Liss v. Cleveland State University*

Dear Sir/Madam:

I enclose the original and three copies of a Complaint in reference to the above-captioned matter. The first copy is for service on Defendant Cleveland State University, the second copy is for the Attorney General and the third copy we would like to have time-stamped. I have also enclosed a check for \$25.00 for the filing fee. Please file the Complaint in your usual manner and return the time-stamped copy and receipt to me in the self-addressed postage-prepaid envelope. *lee*

Thank you for your attention to this matter. Please do not hesitate to call me should you have any questions.

Sincerely,

Lesa Liston  
Paralegal  
lleston@thllaw.com

Enclosures