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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. MENA¹,
Plaintiff,
v.

No. 2018 03479

WALGREENS BOOTS ALLIANCE,
108 Wilmot Road,
Deerfield, Illinois 60015
Registered Agent:
Corporation Service Company
251 Little Falls Drive
Wilmington, Delaware 19808,

WALGREEN CO.,
300 Wilmot Road,
Deerfield, Illinois 60015
Registered Agent:
Corporation Service Company
100 Shockoe Slip, 2nd Floor
Richmond, Virginia 23219,
Defendants.

COMPLAINT

Plaintiff Paul Ethan Mena presents claims of wrongful termination in violation of public policy.

This case arose during Plaintiff Mena's employment as a pharmacist for Defendants and in connection with the termination of that employment.

JURISDICTION

¹ On May 19, 2017, Plaintiff Mena changed his legal name from "Amir Paul Mena" to "Paul Ethan Mena," after Defendants terminated his employment

This Court has jurisdiction pursuant to Virginia Code § 8.01-328.1 and § 17.1-513.

Plaintiff Mena timely filed this action pursuant to Virginia Code §§ 8.01-243, 8.01-248.

VENUE

Venue is proper under Virginia Code § 8.01-262.

THE PARTIES

Plaintiff, Paul Mena, is an adult. He is a United States citizen and currently resides in Florida. At all times relevant to the causes of action in this Complaint, Plaintiff Mena resided in Virginia and worked in Annandale (Fairfax County), Virginia.

Defendants Walgreens Boots Alliance (“Walgreens”) and Walgreen Co. (“Walgreen Co.”) own and operate drugstores in and about Fairfax County, Virginia. Defendants own and operate Walgreens Store #13970, located at 4300 Backlick Road, Annandale, Virginia.

FACTS

1. Since no later than 2014, Plaintiff Mena has been a Registered Pharmacist in Virginia.
2. He is Egyptian and immigrated to the United States in 2003. He obtained his Bachelor of Pharmacy degree from Tanta University in Egypt in 2001, and his Consultant Pharmacist Certification from the University of Florida in 2010.
3. From July 2003 through September 2003, Defendants employed Plaintiff Mena as a Pharmacy Technician in Dallas, Texas.
4. From December 2005 through April 2007, Defendants employed Plaintiff Mena as a floater Pharmacist in Orlando, Florida.
5. In December 2009, Defendants hired Plaintiff Mena as a Corporate Clinical Review Pharmacist at the Walgreens Central Pharmacy Operations Center in Orlando, Florida.

6. In September 2013, Plaintiff Mena earned his license to practice as a consultant pharmacist in Virginia.
7. In April 2014, Plaintiff Mena became certified as an immunizer pharmacist in Virginia.
8. In May 2014, Plaintiff Mena transferred from Florida to a retail division position as a Staff Pharmacist at Walgreens Store #9383 in Warrenton, Virginia.
9. Beginning in August 2014, Plaintiff Mena was removed from the Warrenton store's schedule and instead assigned to "float," meaning that he was not given regular work hours and instead filled in as needed at various Walgreens pharmacies in that market.
10. After Plaintiff Mena complained about his "floating" status to the Defendants' Human Resources department in Warrenton, Virginia, in September 2014, Defendants transferred Plaintiff Mena to a position as an overnight Staff Pharmacist at Walgreens Store #13970 in Annandale, Virginia. At the time of his transfer to Annandale, the Pharmacy Manager was James Lagasca, and the Pharmacy Supervisor was Sheila Arrington. Plaintiff Mena performed successfully under the supervision of these managers, as well as Store Manager David Hendricks.
11. As a result of a reorganization at Walgreens Store #13970 in Annandale during May to June 2015, Defendants' eliminated the Pharmacy Supervisor position encumbered by Ms. Arrington, and Megan Howard became the Annandale Pharmacy Manager supervising Plaintiff Mena.
12. During the time period of mid 2015 through December 2016, while under the supervision of Pharmacy Manager Megan Howard and Store Manager Yoali Mercado, Plaintiff Mena and the other pharmacists were pressured to increase the volume of prescriptions filled at the Annandale store and encouraged to ignore laws governing the practice of pharmacy,

particularly those concerning dispensation of controlled Schedule II narcotics (as defined by Va. Code § 54.1-3448). For example, Pharmacy Manager Howard discouraged Plaintiff Mena from adequately reviewing and verifying the validity of questionable prescriptions for narcotics from practitioners of medicine before filling them; from conducting drug reviews and counselings of prospective patients prior to dispensing prescriptions for narcotics; from reporting to local law enforcement officials his suspicion that a person had obtained or attempted to obtain a prescription for narcotics by fraud or deceit; and, from refusing to affix any false or forged label to a package or receptacle containing any Schedule II narcotics.

13. Plaintiff Mena observed Pharmacy Manager Howard violate the law by filling post-dated narcotics prescriptions, accepting prescriptions with altered origination dates, and neglecting to follow internal controls for ensuring that customers seeking narcotics had valid doctor-patient relationships with their prescribers.
14. Plaintiff Mena also became aware that on multiple occasions, Ms. Howard herself made prescription mis-fills and failed to follow internal controls established for reporting them, such as entering them into the Strategic Tracking and Analytical Reporting System (“STARS”) database or otherwise documenting the incidents for pharmacy board inspection. In one incident occurring on or around June 17, 2016, Ms. Howard provided 56 extra tablets of plain Oxycodone to a patient in error. On June 22, 2016, Plaintiff Mena reported these concerns by email to the District Manager, Denise Felluca, but received no response, and Plaintiff Mena is unaware of Defendants taking any corrective action against Ms. Howard.

15. The Annandale store's pharmacy was open 24 hours and attracted numerous customers seeking narcotics. Due to the improper pharmacy practices employed by the management at Annandale Walgreens, multiple drug-seekers who presented with questionable prescriptions were successful in unlawfully obtaining narcotics there. By Plaintiff Mena's estimate, the number of Schedule II narcotics prescriptions filled typically exceeded the number of prescriptions for Schedule III through V drugs combined.
16. Because Plaintiff Mena made it his practice to refuse to fill suspicious narcotics prescriptions pending appropriate verification with the medical provider, Walgreens Annandale management (Pharmacy Manager Howard and Store Manager Mercado) engaged in retaliation – unduly criticizing his work, downgrading his performance evaluation for fiscal year 2016, and on multiple occasions, beginning in June 2016 and continuing through November 2016, denying his requests for extra shifts and overtime hours.
17. During the period of September 2014 to November 2016, Defendants, to fill its need for staffing, approved the other overnight pharmacist, then Vivian Trang, overtime hours and even scheduled Ms. Trang to work on her planned days off.
18. In 2016, Plaintiff Mena applied at least five times for promotion to various pharmacy manager vacancies, and he was not selected for any of them. District Manager Denise Felluca was a selecting official for at least some of these positions. In some cases, Plaintiff Mena had superior qualifications and greater pharmacy experience than the selectees for these positions.
19. By email dated May 18, 2016, Plaintiff Mena brought his concerns about being retaliated against by the Annandale store pharmacy management, to the attention of Dr. Diane

Nobles, Chief Compliance and Privacy Officer at Walgreens Boots Alliance. In his email, Plaintiff Mena, who is Egyptian, expressed his belief that racial bias was likely at play in his non-selection for numerous promotion opportunities for vacant pharmacy manager positions at Walgreens pharmacies in Northern Virginia, due to the selection of lesser-qualified and less experienced pharmacists who were not minorities. Plaintiff Mena further complained to District Managers, Richard Couch and Denise Felluca, that his requests for promotion and to transfer to daytime positions were being ignored. Dr. Nobles' office indicated that an investigation would take place. To Plaintiff Mena's knowledge, no investigation was ever undertaken by Defendants as he was never interviewed, nor were any of his concerns addressed.

20. At approximately 2:00 am on November 17, 2016, a customer named Adam Noor appeared at the Annandale Walgreens and sought to have a prescription filled by Plaintiff Mena for 10mg oxycodone tablets. Plaintiff Mena recognized Mr. Noor because he had attempted to fill a fraudulent prescription there earlier, on September 20, 2016, and suspected that Mr. Noor's prescription was forged based upon information in Mr. Noor's pharmacy profile. He declined to fill it without verification from Mr. Noor's prescriber, which could be performed during normal business hours. Mr. Noor further appeared to Plaintiff Mena to be intoxicated during this encounter, and Mr. Noor's behavior became aggressive and threatening as a result of Plaintiff Mena's refusal to fill the prescription. Fearing for his safety, Plaintiff Mena called the police, who forced Mr. Noor to leave. Plaintiff Mena left a voice message for the physician whose name was listed on the prescription Mr. Noor had brought to the store before he departed the store at the end of his shift.

21. During regular business hours on November 17, 2016, after Plaintiff Mena's shift had ended, the office of the physician listed on the prescription Mr. Noor had brought to the store earlier that day sent the pharmacy a fax indicating that it had not issued Mr. Noor's prescription for oxycodone, thus confirming that the prescription was forged. Plaintiff Mena was not vindicated by this information, however. At or around 11:00 pm on November 17, 2016, Plaintiff Mena was called into a meeting with Store Manager Yoali Mercado and District Manager Denise Felluca, who without giving an explanation placed him on suspension without pay.
22. Defendants took no action as required by law to report the fraudulent prescription to law enforcement.
23. On November 27, 2017, Plaintiff Mena reported the Annandale Walgreens management's pressure to fill fraudulent prescriptions for narcotic medications, failure to report fraudulent prescriptions for narcotic medications (including an earlier fraudulent prescription that Adam Noor attempted to fill on September 20, 2016) to the Virginia Department of Health Professions and reported, *inter alia*:

Although we had all the evidence we needed at that point [November 17, 2016] to file a police report, District manager/pharmacist Denise Felicia handled the situation as a customer service issue and suspended me since then and never reported Mr. Noor to the local police ... Walgreens company doesn't like employees to call the police when we feel threatened, but it is ok to call the police if there is a shoplifting activity even if it is one dollar in value. We do not have any security features at the store or the pharmacy, and we do not have a security guard on site during the night.

24. On December 1, 2016, Plaintiff Mena was summoned to a meeting with Market Manager Nicole Williams and Asset Protection Manager Donald Dunn, who discussed the November 17, 2016, incident involving Adam Noor. During the meeting, Ms. Williams

and Mr. Dunn denied knowledge of Mr. Noor's prescription being fraudulent (despite Defendants having received written confirmation that the office of the physician listed on the prescription Mr. Noor had presented to the store on November 17, 2016, denied issuing Mr. Noor a prescription for oxycodone) and instead chastised Plaintiff Mena for calling the police, claiming that Plaintiff Mena had committed a "HIPAA violation" by doing so.

25. On December 5, 2016, Plaintiff Mena reported Mr. Noor to a Fairfax County, Virginia police detective. Two days later, on December 7, 2016, Fairfax County Police Department Detective Nicholas J. Salvado arrived at the Walgreens Store #13970 in Annandale, Virginia with a search warrant and obtained a copy of the forged prescription presented by Mr. Noor on November 17, 2016, the physician's faxed statement indicating that the prescription was fake, and store videotape containing footage of Mr. Noor's confrontational and aggressive behavior towards Plaintiff Mena in the early morning hours of November 17, 2016. While executing the search warrant, Detective Salvado made inquiries of Pharmacy Manager Megan Howard and observed her retrieve records subject to the warrant from a file marked "HIPAA."
26. Subsequently, Mr. Noor was charged with five separate felony counts of "Obtaining Drug by Fraud," to include the offense on November 17, 2016 reported by Plaintiff Mena. On August 9, 2017, Mr. Noor entered a felony guilty plea and was sentenced in the Fairfax County General District Court.
27. Following Detective Salvado's visit to the Annandale Walgreens pharmacy, Plaintiff Mena received a telephone call from Ms. Williams asking him to report for another meeting with her. The meeting was later held on December 15, 2016 at the regional

market office in Chantilly, VA. At that time, Ms. Williams verbally terminated Plaintiff Mena, claiming that the reason for his termination was because he had committed a “*HIPAA violation*” by reporting Mr. Noor to law enforcement. Plaintiff Mena had been in a suspension-without-pay status from November 17, 2016, through to December 15, 2016, the effective date of his termination of employment by Defendants.

28. Plaintiff Mena never received any explanation in writing for his termination. After he was discharged, Plaintiff Mena contacted Defendants’ Human Resources department seeking a written explanation for his termination. In a letter dated December 27, 2016, the Human Resources representative merely stated that “*Mr. Mena left for confidential reasons*” and did not specify that he was terminated or engaged in misconduct of any kind.

29. On December 11, 2016, Plaintiff Mena filed for unemployment insurance benefits while in a suspension-without-pay status. In response to Plaintiff Mena’s application for unemployment insurance benefits, Defendants falsely claimed to the Virginia Employment Commission that Plaintiff Mena engaged in the “*unauthorized removal of company property and/or funds.*” Yet, Defendants provided no evidence in support of this purported misconduct, and the Virginia Employment Commission granted Plaintiff Mena’s unemployment insurance and made it effective December 11, 2016.

COUNT I

(Wrongful Termination in Violation of Public Policy – Va. Code § 54.1-3303(B))

30. Plaintiff restates paragraphs 1 – 29, above.

31. During Plaintiff Mena's employment with Defendants, he was subject to the provisions of Chapter 33 of Title 54.1 of the Virginia Code because he held a license to practice pharmacy issued by the Virginia Board of Pharmacy.
32. Virginia Code § 54.1-3303(B) provides that a pharmacist must verify the validity of any questionable prescription. Plaintiff Mena refused to engage in the violation of this statute. This statute was enacted for the protection of the health, safety, and personal freedoms of the general public. Defendants' termination of Plaintiff Mena violated the established public policy underlying this statute.
33. Defendants terminated Plaintiff Mena from his employment with Defendants because he refused to violate the statute.
34. Defendants' actions were reckless, attended by malice and ill-will, were willful and wanton, oppressive, and demonstrated knowing disregard for the rights of Plaintiff Mena and other employees, justifying an award of punitive damages.
35. As a direct and proximate result of Defendants termination of him, Plaintiff Mena suffered and continues to suffer harm, including emotional distress, out-of-pocket expenses, loss of income, loss of employment opportunities, loss of reputation, and attorneys' fees and costs.

COUNT II

(Wrongful Termination in Violation of Public Policy – Va. Code § 54.1-3320(A)(1))

36. Plaintiff restates paragraphs 1 – 29, above.
37. During Plaintiff Mena's employment with Defendants, he was subject to the provisions of Chapter 33 of Title 54.1 of the Virginia Code because he held a license to practice pharmacy issued by the Virginia Board of Pharmacy.

38. Virginia Code § 54.1-3320(A)(1) provides that a pharmacist must review a prescription in adherence to current practices in pharmacy before filling a prescription. Plaintiff Mena refused to engage in the violation of this statute. This statute was enacted for the protection of the health, safety, and personal freedoms of the general public. Defendants' termination of Plaintiff Mena violated the established public policy underlying this statute.
39. Defendants terminated Plaintiff Mena from his employment with Defendants because he refused to violate the statute.
40. Defendants' actions were reckless, attended by malice and ill-will, were willful and wanton, oppressive, and demonstrated knowing disregard for the rights of Plaintiff Mena and other employees, justifying an award of punitive damages.
41. As a direct and proximate result of Defendants termination of him, Plaintiff Mena suffered and continues to suffer harm, including emotional distress, out-of-pocket expenses, loss of income, loss of employment opportunities, loss of reputation, and attorneys' fees and costs.

COUNT III

(Wrongful Termination in Violation of Public Policy – Va. Code § 54.1-3320(A)(6))

42. Plaintiff restates paragraphs 1 – 29, above.
43. During Plaintiff Mena's employment with Defendants, he was subject to the provisions of Chapter 33 of Title 54.1 of the Virginia Code because he held a license to practice pharmacy issued by the Virginia Board of Pharmacy.
44. Virginia Code § 54.1-3320(A)(6) provides that a pharmacist must ensure the accuracy of a completed prescription prior to dispensing the prescription. Plaintiff Mena refused to

engage in the violation of this statute. This statute was enacted for the protection of the health, safety, and personal freedoms of the general public. Defendants' termination of Plaintiff Mena violated the established public policy underlying this statute.

45. Defendants terminated Plaintiff Mena from his employment with Defendants because he refused to violate the statute.

46. Defendants' actions were reckless, attended by malice and ill-will, were willful and wanton, oppressive, and demonstrated knowing disregard for the rights of Plaintiff Mena and other employees, justifying an award of punitive damages.

47. As a direct and proximate result of Defendants termination of him, Plaintiff Mena suffered and continues to suffer harm, including emotional distress, out-of-pocket expenses, loss of income, loss of employment opportunities, loss of reputation, and attorneys' fees and costs.

COUNT IV

(Wrongful Termination in Violation of Public Policy –

Va. Code §§ 54.1-3320(A)(3) and 54.1-3319(A))

48. Plaintiff restates paragraphs 1 – 29, above.

49. During Plaintiff Mena's employment with Defendants, he was subject to the provisions of Chapter 33 of Title 54.1 of the Virginia Code because he held a license to practice pharmacy issued by the Virginia Board of Pharmacy.

50. Virginia Code §§ 54.1-3320(A)(3) and 54.1-3319(A) provide that a pharmacist must conduct a drug review and counsel the prospective patient, as required by law, prior to dispensing or refilling any prescription. Plaintiff Mena refused to engage in the violation of this statute. This statute was enacted for the protection of the health, safety, and

personal freedoms of the general public. Defendants' termination of Plaintiff Mena violated the established public policy underlying this statute.

51. Defendants terminated Plaintiff Mena from his employment with Defendants because he refused to violate the statute.
52. Defendants' actions were reckless, attended by malice and ill-will, were willful and wanton, oppressive, and demonstrated knowing disregard for the rights of Plaintiff Mena and other employees, justifying an award of punitive damages.
53. As a direct and proximate result of Defendants termination of him, Plaintiff Mena suffered and continues to suffer harm, including emotional distress, out-of-pocket expenses, loss of income, loss of employment opportunities, loss of reputation, and attorneys' fees and costs.

COUNT V

(Wrongful Termination in Violation of Public Policy – Va. Code § 54.1-3408.2)

54. Plaintiff restates paragraphs 1 – 29, above.
55. During Plaintiff Mena's employment with Defendants, he was subject to the provisions of Chapter 34 of Title 54.1 of the Virginia Code ("The Drug Control Act") because he held a license to practice pharmacy issued by the Virginia Board of Pharmacy.
56. Virginia Code § 54.1-3408.2 provides that a pharmacist who reasonably suspects that a person has obtained or attempted to obtain a prescription for a controlled substance by fraud or deceit, who reports the activity in good faith to the local law-enforcement agency for investigation is protected from civil damages for making such report or furnishing such information or records. Plaintiff Mena engaged in activity protected by this statute. This statute was enacted for the protection of the health, safety, and personal freedoms of

the general public. Defendants' termination of Plaintiff Mena violated the established public policy underlying this statute.

57. Defendants terminated Plaintiff Mena from his employment with Defendants because he engaged in a protected activity by reporting a fraudulent prescription to law enforcement.
58. Defendants' actions were reckless, attended by malice and ill-will, were willful and wanton, oppressive, and demonstrated knowing disregard for the rights of Plaintiff Mena and other employees, justifying an award of punitive damages.
59. As a direct and proximate result of Defendants termination of him, Mena suffered and continues to suffer harm, including emotional distress, out-of-pocket expenses, loss of income, loss of employment opportunities, loss of reputation, and attorneys' fees and costs.

COUNT VI

(Wrongful Termination in Violation of Public Policy – Va. Code § 54.1-3410(A)(1))

60. Plaintiff restates paragraphs 1 – 29, above.
61. During Plaintiff Mena's employment with Defendants, he was subject to the provisions of Chapter 34 of Title 54.1 of the Virginia Code ("The Drug Control Act") because he held a license to practice pharmacy issued by the Virginia Board of Pharmacy.
62. Virginia Code § 54.1-3410(A)(1) provides that a pharmacist is prohibited from dispensing a drug listed in Schedule II unless the pharmacist has determined that the prescription is properly executed. Mena refused to engage in the violation of this statute. This statute was enacted for the protection of the health, safety, and personal freedoms of the general public. Defendants' termination of Mena violated the established public policy underlying this statute.

63. Defendants terminated Mena from his employment with Defendants because he refused to violate the statute.
64. Defendants' actions were reckless, attended by malice and ill-will, were willful and wanton, oppressive, and demonstrated knowing disregard for the rights of Plaintiff Mena and other employees, justifying an award of punitive damages.
65. As a direct and proximate result of Defendants termination of him, Plaintiff Mena suffered and continues to suffer harm, including emotional distress, out-of-pocket expenses, loss of income, loss of employment opportunities, loss of reputation, and attorneys' fees and costs.

COUNT VII

(Wrongful Termination in Violation of Public Policy – Va. Code § 18.2-248)

66. Plaintiff restates paragraphs 1 – 29, above.
67. Virginia Code § 18.2-248 provides that it is a crime for a pharmacist to sell, give, or distribute a controlled substance or an imitation controlled substances if not in compliance with the statutes and rules governing when and how pharmacists are permitted to dispense controlled substances. Plaintiff Mena refused to engage in the violation of this statute. This statute was enacted for the protection of the health, safety, and personal freedoms of the general public. Defendants' termination of Plaintiff Mena violated the established public policy underlying this statute.
68. Defendants terminated Plaintiff Mena from his employment with Defendants because he refused to violate the statute.

69. Defendants' actions were reckless, attended by malice and ill-will, were willful and wanton, oppressive, and demonstrated knowing disregard for the rights of Plaintiff Mena and other employees, justifying an award of punitive damages.

70. As a direct and proximate result of Defendants termination of him, Plaintiff Mena suffered and continues to suffer harm, including emotional distress, out-of-pocket expenses, loss of income, loss of employment opportunities, loss of reputation, and attorneys' fees and costs

COUNT VIII

(Wrongful Termination in Violation of Public Policy - Va. Code § 18.2-256)

71. Plaintiff restates paragraphs 1 – 29, above.

72. Virginia Code § 18.2-256 provides that it is a crime for a pharmacist to conspire to commit any offense listed in Title 18.2, Chapter 7, Article 1 (§§ 18.2-247 to 18.2-265) or the Drug Control Act (§ 54.1-3400 et seq.). Plaintiff Mena refused to engage in the violation of this statute. This statute was enacted for the protection of the health, safety, and personal freedoms of the general public. Defendants' termination of Plaintiff Mena violated the established public policy underlying this statute.

73. Defendants terminated Plaintiff Mena from his employment with Defendants because he refused to violate the statute.

74. Defendants' actions were reckless, attended by malice and ill-will, were willful and wanton, oppressive, and demonstrated knowing disregard for the rights of Plaintiff Mena and other employees, justifying an award of punitive damages.

75. As a direct and proximate result of Defendants termination of him, Plaintiff Mena suffered and continues to suffer harm, including emotional distress, out-of-pocket

expenses, loss of income, loss of employment opportunities, loss of reputation, and attorneys' fees and costs.

COUNT IX

(Wrongful Termination in Violation of Public Policy – Va. Code § 18.2-258.1)

76. Plaintiff restates paragraphs 1 – 29, above.
77. Virginia Code § 18.2-258.1(F) provides that it is a crime to affix any false or forged label to a package or receptacle containing any controlled substance. Plaintiff Mena refused to engage in or assist someone else to engage in the violation of this statute. This statute was enacted for the protection of the health, safety, and personal freedoms of the general public. Defendants' termination of Plaintiff Mena violated the established public policy underlying this statute.
78. Defendants terminated Plaintiff Mena from his employment with Defendants because he refused to violate the statute.
79. Defendants' actions were reckless, attended by malice and ill-will, were willful and wanton, oppressive, and demonstrated knowing disregard for the rights of Plaintiff Mena and other employees, justifying an award of punitive damages.
80. As a direct and proximate result of Defendants termination of him, Plaintiff Mena suffered and continues to suffer harm, including emotional distress, out-of-pocket expenses, loss of income, loss of employment opportunities, loss of reputation, and attorneys' fees and costs.

COUNT X

(Wrongful Termination in Violation of Public Policy - Va. Code § 18.2-260)

81. Plaintiff restates paragraphs 1 – 29, above.
82. Virginia Code § 18.2-260 provides that it is unlawful for a pharmacist to dispense any drug except as authorized by the Drug Control Act (§ 54.1-3400 *et seq.*) or as provided for in Title 18.2, Chapter 7, Article 1 (§§ 18.2-247 to 18.2-265). Plaintiff Mena refused to engage in the violation of this statute. This statute was enacted for the protection of the health, safety, and personal freedoms of the general public. Defendants' termination of Plaintiff Mena violated the established public policy underlying this statute.
83. Defendants terminated Plaintiff Mena from his employment with Defendants because he refused to violate the statute.
84. Defendants' actions were reckless, attended by malice and ill-will, were willful and wanton, oppressive, and demonstrated knowing disregard for the rights of Plaintiff Mena and other employees, justifying an award of punitive damages.
85. As a direct and proximate result of Defendants termination of him, Plaintiff Mena suffered and continues to suffer harm, including emotional distress, out-of-pocket expenses, loss of income, loss of employment opportunities, loss of reputation, and attorneys' fees and costs.

COUNT XI

(Wrongful Termination in Violation of Public Policy – Va. Code § 18.2-261)

86. Plaintiff restates paragraphs 1 – 29, above.
87. Virginia Code § 18.2-261 provides that a pharmacist who violates any of the provisions of the Drug Control Act (§ 54.1-3400 *et seq.*) or of listed in Title 18.2, Chapter 7, Article 1 (§§ 18.2-247 to 18.2-265), and who is not criminally prosecuted, shall be subject to a monetary penalty. Plaintiff Mena refused to engage in the violation of this statute. This

statute was enacted for the protection of the health, safety, and personal freedoms of the general public. Defendants' termination of Plaintiff Mena violated the established public policy underlying this statute.

88. Defendants terminated Plaintiff Mena from his employment with Defendants because he refused to violate the statute.
89. Defendants' actions were reckless, attended by malice and ill-will, were willful and wanton, oppressive, and demonstrated knowing disregard for the rights of Plaintiff Mena and other employees, justifying an award of punitive damages.
90. As a direct and proximate result of Defendants termination of him, Plaintiff Mena suffered and continues to suffer harm, including emotional distress, out-of-pocket expenses, loss of income, loss of employment opportunities, loss of reputation, and attorneys' fees and costs.

COUNT XII

(Wrongful Termination in Violation of Public Policy – Va. Code § 54.1-3411(1))

91. Plaintiff restates paragraphs 1 – 29, above.
92. During Plaintiff Mena's employment with Defendants, he was subject to the provisions of Chapter 34 of Title 54.1 of the Virginia Code because he held a license to practice pharmacy issued by the Virginia Board of Pharmacy.
93. Virginia Code § 54.1-3411(1) provides that a pharmacist must not dispense a refill of a prescription for a Schedule II narcotic under any circumstance. Plaintiff Mena refused to engage in the violation of this statute. This statute was enacted for the protection of the health, safety, and personal freedoms of the general public. Defendants' termination of Plaintiff Mena violated the established public policy underlying this statute.

94. Defendants terminated Plaintiff Mena from his employment with Defendants because he refused to violate the statute.
95. Defendants' actions were reckless, attended by malice and ill-will, were willful and wanton, oppressive, and demonstrated knowing disregard for the rights of Plaintiff Mena and other employees, justifying an award of punitive damages.
96. As a direct and proximate result of Defendants termination of him, Plaintiff Mena suffered and continues to suffer harm, including emotional distress, out-of-pocket expenses, loss of income, loss of employment opportunities, loss of reputation, and attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE the Court should:

- A. As to Counts I – XII, enter judgment against Defendants and in favor of Plaintiff Mena;
- B. As to Counts I – XII, award Plaintiff Mena retroactive reinstatement to his last position of record with Defendants, with back pay and benefits, plus interest;
- C. As to Counts I – XII, award Plaintiff Mena pre- and post-judgment interest;
- D. As to Counts I – XII, award compensatory damages against Defendants and in favor of Plaintiff Mena in the amount of \$1,000,000.00;
- E. As to Counts I – XII, award punitive damages against Defendants and in favor of Plaintiff Mena in an amount to be determined by the trier of fact, but not to exceed the amount permitted by Virginia Code § 8.01-38.1;
- F. As to Counts I – XII, award Plaintiff Mena his reasonable attorneys' fees, legal fees, and expert costs;

G. As to Counts I – XII, award Plaintiff Mena such other relief as the Court deems just and reasonable.


AD DAMNUM CLAUSE

H. Plaintiff Mena requests an award of compensatory damages in the amount of \$1,000,000, and punitive damages in the amount of \$350,000, for a total award of monetary damages in the amount of \$1,350,000.

JURY DEMAND

I. Plaintiff Mena demands a jury trial on all issues so triable.

Respectfully submitted,



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*Motion for *Pro Hac Vice* Admission Forthcoming