

1 FAC-Closure of pharmacies
2 Dr. Joseph Anoruo
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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF NEVADA.**

10 JOSEPH CHIDI ANORUO,

11 Plaintiff,

12 vs.

13 ROBERT A. McDonald , Secretary,
14 Department of Veterans Affairs,

15 Joseph Moody, AFGC local President
16 Defendants

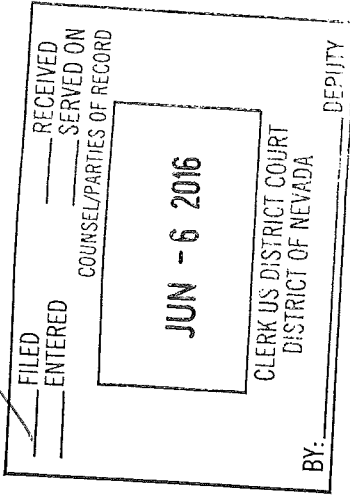
17 Case No. 2:16-CV-00441-GMN-NJK

18 *AMENDED*

19 COMPLAINT ON THE CLOSURE OF
20 PHARMACIES LOCATED AT THE VA OF
21 SOUTHERN NEVADA PRIMARY CARE
22 CLINICS AND FAILURE TO NEGOTIATE
23 THE MANDATORY SUBJECTS OF THE
24 IMPACT OF CONSOLIDATION

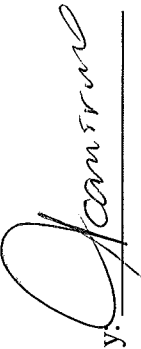
25 Plaintiff, Joseph Anoruo, moves this motion to seek injunctive or other nonmonetary relief
26 against the United States pursuant to 1976 amendment to the Administrative Procedure Act (5
27 U.S.C.A. §§ 702-703), for violation of Federal Service Labor-Management Relations Statute
28 ("FSLMRS") 5 USC 7106 (b)(2) and (3) pursuant to the Labor-Management Reporting and
Disclosure Act ("LMRDA") 29 USC §401 et seq.; 29 CFR Parts 401 to 453). 5 USC 7106 (b)(2)
and (3) are clearly defined mandatory subjects that federal agencies and unions must negotiate; 5
USC § 6120-6127authorizes management to offer compressed schedule pursuant to "Expanding
Family-Friendly Work Arrangements in Executive Branch Memorandum of President of the
United States, July 11, 1994, 59 F.R. 36017; Misrepresentation is a tort, or a civil wrong. This
means that a misrepresentation can create civil liability if it results in a pecuniary loss. The
government incorrectly stated that there is no applicable waiver of sovereign immunity¹. Plaintiff

¹ See 5 U.S.C.A. §§ 702-703, "An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party".



1 is bringing this case against the AFGE as the second defendant under the provisions of the Labor-
2 Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 401, et seq²; 29 CFR Parts
3 401 to 453.

4 Respectfully submitted this 6th day of June 2016,

5 By: 

6 Dr. Joseph Anoruo
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11 Plaintiff Pro Se

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24 5 U.S.C.A. §§ 703, "The form of proceeding for judicial review is the special statutory review proceeding
25 relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any
26 applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or
27 mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review
28 proceeding is applicable, the action for judicial review may be brought against the United States, the
agency by its official title, or the appropriate officer"

2 Section 401 et seq. of the LMRDA provides that: [a]ny person whose rights are secured by the provision
of this subchapter have been infringed by any violation of the subchapter may bring a civil action in a
district court of the United States for such relief (including injunctions) as may be appropriate.

PARTIES

1. Plaintiff, Joseph Anoruo, is an individual, male, taxpayer and a citizen of United States, domiciled in Clark County, Nevada.
2. Defendant violated Federal Service Labor-Management Relations Statute ("FSLMRS"), 5 U.S.C. § 7106(b) (2) and 5 U.S.C. § 7106(b) (3). **These are clearly defined mandatory subjects that federal agencies and unions must negotiate.**
3. The defendant and AFGE violated 5 USC § 6120-6127, and may be in violation of 18 U.S. Code § 1001.
4. The decision to close the pharmacies in the clinics will have far reaching economic consequences on the Veterans, directly and indirectly impacted employees and the public.
5. Plaintiff is an employee of Defendant, working as a clinical pharmacist.
6. Plaintiff is an active and dues paying member of American Federation of Government Employee (AFGE) chapter 1224.
7. Defendant, Robert A. McDonald, Secretary, Department of Veterans Affairs, is a department of the United States and employer of Plaintiff.
8. At all relevant times, Plaintiff fully, adequately and completely performed all of the functions, duties and responsibilities of his employment with Defendant.
9. Plaintiff has a record of excellent work performance, managerial skills, innovation, outside VA management experience, strong will for justice, equity and fairness and team work.
10. Defendant acted through individuals as agents, servants, employees, managers, and directors including Mr. Bryan Tarman, director of pharmacy, Ms. Peggy Kearns, facility director
11. Joseph Moody is the president of AFGE local 1224 and charged with representing the interest of the plaintiff and other employees with the management including negotiating and minimizing impact of consolidation.
12. All matters regarding exclusive right to negotiate, compensation, terms, conditions, rights, and privileges of plaintiff's employment are controlled by Defendants.

JURISDICTION /VENUE

13. Venue is proper in the United States District Court for the District of Nevada pursuant to the Labor-Management Reporting and Disclosure Act ("LMRDA") 29 U.S.C. § 401- 412.

1 28 5 U.S.C.A. §§ 702–703 and U.S.C. Section 1391(b), wherein plaintiff resides and
2 defendants regularly conducts business and where all the alleged wrongful conduct
3 occurred.

4 STATEMENT OF THE ISSUE

5 Whether mandatory appropriate arrangements for employees adversely affected by
6 management's exercise of authority pursuant to 5 U.S.C. § 7106(b) (3) can be ignored by AFGE
7 and Leadership.

8 Whether, the decision to close the pharmacies located in the clinic based on 1.6 million
9 dollars cost saving and avoidance was begotten by skewed data analysis and misrepresentation of
10 material fact³

11 Whether plaintiff has constitutional and legal right to bring this case to this court to seek
12 nonmonetary relief for pecuniary lose arising from the 1st and 2nd defendant's actions, inactions,
13 omissions or commission.

14 Whether, the defendant's action greatly and negatively affected the veterans, the affected
15 employees, tax payers and general public.

16 INTRODUCTION

17 Plaintiff is a Taxpayer and dues paying member of AFGE. Plaintiff tried to resolve the issue
18 internally as public law demands and informed defendants through informal administrative
19 complaint dated February 19 and revised on February 22, 2016 that he will file an ex parte motion
20 in court if the management and AFGE failed to heed to his demand by February 29, 2016. On
21 ^{February} January 24, 2016, the management replied, abrogated the responsibility to the AFGE who has the
22 exclusive bargaining power with the management. When AFGE pulled out of the management
23 conference to negotiate the impact of consolidation with plaintiff because he contacted federal
24 lawyer to know his rights and responsibilities before attending the conference, he contacted local

25 ³ if the "alleged misrepresentations are merely another way of asserting that a breach of contract occurred.

26 . . . the claim is not barred simply because it might also be stated as a tort." Olin Jones Sand co v. United
27 States, 225 Ct. Cl. at 745 (1980) (finding that a claim was justiciable only because the alleged
28 misrepresentation affected the performance of the contract). As such, "there must be a direct connection
between the Government's contractual obligations and the alleged tortious conduct." H.H.O., Inc. v. United
States, 7 Cl. Ct. 703, 706 (1985); see also C.B.C. Enters., Inc. v. United States, 24 Cl. Ct. 1, 4, (1991)."

1 EEO manager on February 25, 2016. The EEO manager referred plaintiff to OPM manager who
2 happened to be in the facility. Plaintiff was advised that the issue is not an EEO matter or to be
3 resolved through a grievance procedure and was referred to the management and National AFGE
4 office for appropriate action. The AFGE national office was contacted and was redirected to the
5 local union for proper attention. On March 01, 2016, plaintiff filed ex parte motion to extend the
6 implementation dateline by 60 days to allow stake holders to take appropriate action. However, on
7 March 03, 2016, this court denied the motion pursuant to Federal Rule of Civil Procedure (FRCP)
8 3 and further ordered that, "Plaintiff will be given leave to re-file these motions after he files a
9 complaint in this action.

10 It is true plaintiff has filed 2 employments cases against the VA which stems from
11 management unfair treatment and misrepresentations. The district court orders of August 23, 2012
12 and February 18, 2014 as indicated by the defendant are indisputably a travesty of justice⁴. In the
13 first case, Dr. Anoruo contacted EEOC on Julye 30, 2010, 36 days after the final Act in continuing
14 violation of employment claims. In the second case, summary judgment was erroneously granted
15 before timely responses to motion to amend doc 114(dkt #117) and correct order 109 (Dkt. 118)
16 were filed and still pending in violation of due process clause.

17 While consolidation sounds like a robust idea, not all consolidation delivers the money
18 saving or desired outcome measures highly anticipated, especially when it does not include
19 personnel lay off unless this is aimed at constructive or structured forced resignation. Studies
20 have shown that efficiency of labor and better outcome measures are better achieved with
21 decentralization than with consolidation. This decision is a case in point and may be an exercise in
22 futility. A review of our side by side comparison will be a beginning point of reference.

23 On January 29, 2016, Mr. Jack Ford, a veteran and VSO representative presented to the
24 pharmacy for counseling and medication pick up. Following counseling section, he inferred and

25 ⁴ See Anoruo v. Shinseki, No. 11-cv-02070-MMD-CWH, 2012 WL 364844, at *3(d.NEV.August,2012)
26 (dismissing Anoruo's second amended complaint and employment claims as time barred). *At court of*
27 *Federal claims the same claim, see Anoruo v United States Case no: 15-658C 03'28/16 (pg. 16),*
28 *defendant noted, "We do not contest the timeliness of Dr. Anoruo's SLRP claim. See also, Anoruo v.*
McDonald, 9TH Circuit No 14-15391 (Appeal pending) /No. 2-12-cv-01190-JCM-GWF,2014 WL 664643, (D.
Nev. Feb. 18, 2014) (summary judgment in favor of the federal defendant on Anoruo's employment Claims)

1 brought up the issues and his concerns about the closure of the pharmacies in the clinics and how
2 difficult it will be for the veterans when the pharmacies are closed. He further reiterated the
3 outcome of their meeting with the new director “Ms. Peggy Kearns.” He stated that they were
4 informed that Las Vegas is the only VA Clinics that have pharmacies in them and the reason for
5 the super Clinics were because Las Vegas had a clinic based system and did not have a hospital
6 and will save \$1.6 million. While that information was not entirely inaccurate before 2010, the
7 Super Clinics with pharmacies concept were established in 2010 alongside the VAMC hospital to
8 make access to medication and care easy to our veterans because of the location of the Las Vegas
9 VAMC. It was a carefully envisioned and thought out plan to assist some of our resource poor
10 veterans from driving 60-80 miles or more round trip, 3-4 hours or more including wait time at
11 remote VAMC hospital to access care including pharmacy services which is more than dispensing
12 medications. In the order hand, VA will not save 1.6 million, rather, VA shall lose over 1 million
13 dollars and veterans, plaintiff and other employees are made to incur pecuniary loss.

14 The purpose of pharmacy in the Clinics has not always been to pick up emergent
15 medication as presented in the FACT SHEET. Pharmacies in the Clinics are in the clinics to
16 enthrone pharmaceutical care initiative to improve patient outcome measures. This is a norm in
17 many VAs and a way of the future as documented in exhibit 2 &4. Las Vegas is not an “orphan
18 facility” in this regard. Prior to the opening of the super clinics and VAMC hospital in 2011 and
19 2012, Las Vegas VA had cost effective point of care pharmacy services in all the Clinics that was
20 not a full fledge pharmacy as we do now and could have been used until the opening of hospital on
21 August 14, 2012 and hospital Pharmacy on August 19, 2012. So, Super Clinics with pharmacies
22 was not established because Las Vegas had no hospital.

23 Most of our Veterans are senior citizens who at times find it difficult to get from point A to
24 point B. The microcosmic analysis of management that closing pharmacies located in the Clinics
25 and send veterans to Walgreen or Walmart to pick up 10 day emergency medication undermines
26 the pharmaceutical care paradigm which is why pharmacist are put at the front windows in the
27 VA. This practice is a not a norm, but adopted by the VA in order to embrace the ever changing
28 medical needs of our veteran and pharmaceutical care initiative. The norm is to have technicians in
the front window and have pharmacist “behind the counters.” It is surprising that those that should
be promoting the pharmaceutical care concept are in the driver sit to close the pharmacies and

1 pushing pharmacy to the jet ages. Pharmacists are licensed professionals and not robots or
2 OPTIFILL dispensing system used by CMOP.

3 In 2004, I applied for a qualified student loan repayment program, this same management
4 erroneously denied it and concealed the reasons for the denial until I discovered it in 2011 with
5 diligent inquiry. As a victim of VA manager's misrepresentation and poor analysis of material
6 facts in the past, a team player and a front line pharmacist for about the past 13 years, who opened
7 SW Clinic pharmacy at Jones Blvd in August 2003 and SW PCC in January 12, 2012 and works
8 with veterans and share their burden and grief 5 days a week at SW PCC that is directly affected
9 by the closure decision, I do not want what happened to me to happen to our nation's veterans.

10 All the manager's and staff are employees of the VA and are here today to serve those
11 "who served" in fulfillment of President Lincoln's promise: "To care for him who shall have borne
12 the battle and for his widow, and his orphan" by serving and honoring the men and women who
13 are America's Veterans." The easier wrong is to close the pharmacies located in the Super Clinics
14 and the harder right is to keep them open. Let's take our veterans as members of our family and
15 treat them as such.

16 Since 2009, VA has lost over 5 million dollars of tax payer's money on Pharmacy
17 automation system. Precisely, around 2009, we disposed our optimal working OPTIFILL
18 dispensing system that cost the VA over 1.5 million dollars in order to procure Becker Cell
19 dispensing system that cost the VA about the same amount of dollars or more at the time the VA
20 was about to break ground for the new hospital and super clinics.

21 In 2011 with the completion of the hospital structures and super primary care clinics, we
22 disposed the BECKER Cell dispensing system and chemo hoods that cost the VA millions of
23 dollars and procured new chemo hood and Script pro pharmacy dispensing system that cost VA
24 over 2 million dollars.

25 Now with the closure decision, we will dispose the Script pro dispensing system; may
26 revert back to our old ways because we want to centralize the pharmacy, cut cost that we may not
27 realize in the expense of our core values of veteran focused centered approach to care. This can
28 only happen in the VA? Who suffers this? The veterans and employees directly or indirectly
affected. ~~So you should act fast to stop this decision from going into effect in 2 weeks unless the
decision is supported by significant savings and improve outcome measures.~~

FACTUAL ALLEGATIONS

- 1 On October 26, 2015, it was presented in some of the primary care Clinics during their
2 monthly meeting that the leadership and PENTAD has approved the closure of the
3 pharmacies located in the Clinics. "AFGE and the congressional staffers have been notified
4 and the VSOs will be notified today" see Exhibit 14
- 5 2. On October 29, 2015 during emergency pharmacy management meeting to discuss the
6 above information, the management denied information and called it a rumor, blamed
7 HAS for bringing the matter to the attention of the staff in order to open proactive
8 discussion on the proposed realignment initiative in order to ensure a seamless process.
- 9 3. The pharmacy Leadership admitted that the work group requested data from pharmacy and
10 pharmacy submitted the requested data and thereafter stated that pharmacy located in the
11 PCCs are closing because the VA will save 2 million dollars by way of inventory
12 management, contract and personnel cost.
- 13 4. In the skewed data presented to achieve 2 million dollars, there was obvious inflation of
14 Clinic inventories to a staggering **2.964.405.65 million dollars** in inventory cost (**Exhibit
15 1-top portion**).
- 16 5. **In consolidation without staff lay off, inventory is cost neutral in Make/ Buy analysis**
17 and remotely controlled by pharmacy management. Most prescriptions are processed and
18 are usually mailed to patients through consolidated mail order pharmacy (CMOP) except
19 most narcotics which are processed for Clinic pick up or mailed out from the VAMC.
- 20 6. With this decision to close, cost of mailing Narcotics will rise in geometric progression.
21 This fact is overlooked by leadership. AWARD winning CMOP concept as being
22 presented is not a new initiative and has been in use since 2003 and beyond.
- 23 7. **On November 06, 2015**, I sent out a detailed memorandum against the rumored closure of
24 the Pharmacies located in the PCC and rebutted the data presented as detailed in **Exhibit 2:
25 pg: 4-8**.
- 26 8. **On November 06, 2015**, following my memorandum, Bryan sent out a rebuttal e-mail
27 explanation to some of my indisputable facts including the inflated data used in the
28 analysis Exhibit: 2-#3, Pg. 7). Compare his explanation with in exhibit 2 pg. 7 with
material fact as presented in **exhibit 1- top, Pg.2**.

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9. **Also**, contrary to Bryan’s statement in exhibit 2, when I received the information that Bryan was planning to dispose OPTIFILL, I called Bryan to discourage him from that action. However, I did not call Bryan to discuss the excess charge in my Clinic inventory because it was not brought to my attention until it was used to justify the 2 million dollars in saving to warrant the closure of pharmacies in the Clinics.
10. **On November 13, 2015** during a meeting to discuss the rumor, the management again presented that PENTAD has reviewed the DATA presented by pharmacy management and VISN 21 managers has recommended the closure of the pharmacies in the PCC’S, as well as, merging some pharmacy positions for efficiency and effectiveness, and congressional staffers and VSO has also been informed of the possible realignment or centralization of the pharmacy operation.
11. PENTAD and VISN 21 manager’s reviewed and recommended the closure based on the information presented that bear heavily on the number of pharmacy personnel, the inflated inventory data and skewed Make/ Buy analysis.
12. On November 16, 2016 I presented a memorandum to show that the data in the Make /Buy analysis pharmacy only quantitative analysis was incorrectly applied and that data are inflated and that the closure will not save VA money exhibit 2A: pg: 9-14.
13. Following receipt of my report on November 16, 2015, the acting facility director, Mr. Bill Caron clarified management misstatement in item 8 above as noted in Exhibit 10 Pg. 41(1). As a proven and transparent leader with integrity, he further promised to share abbreviated data fact sheet and made real his promise on November 20, 2015. Exhibit 3:16-17.
14. On November 20, 2015, leadership presented revised skewed Make/Buy analysis with a new reduced cost savings/avoidance of 1.6 million dollars. This also included a reduced inventory cost to 1.8million dollars. (Exhibit 3).The new figure was still higher than the actual drug inventory cost in the 4 Clinics by over 1 million dollars as documented below **and** incorrectly applied current payroll FTEE (PCC) of **\$1,565,145.72**. This is cost neutral in Make/Buy analysis since no staff is laid off but horizontally transferred and should be placed in both columns as evidenced in **Managerial Accounting, v. 1.0 by Kurt Heisinger and Joe Hoyle. Exhibit 15**. However, the 1.4 FTEE of **\$218, 882.05** should remain in Make column to make a difference.

15. The 1.4Ftee presented as the rationale to pull back the staff from the Clinics is not needed as pharmacy is already over staffed as demonstrated in VISN 21 recommendation. See exhibit 6 for comparison hours of operation of bigger and larger VAs in relation to ours.

16. The figures presented from **October 2014 thru August 2015** were also inflated based on our actual drug invoices inventory from SW PCC in those months. **Exhibit 1.**

February	\$5371.76	July	\$1675.94
March	\$6282.67	August	\$3310.69
April	\$6644.00	September	\$3202.45
May	\$6315.90	October	\$5500.48
June	\$6593.95	TOTAL:	\$41, 695.15

17. For fairness and avoidance of doubt, let's double these figures to account for some non-narcotics and extrapolate it to the 4 Clinics for 12 months, we are still under **\$600, 000.00.**

So, where did they \$1.827, 333.64 from exhibit 3 come from?

18. **On November 23, 2016 at 08:32 AM**, I presented evidenced based Make/Buy analysis that demonstrates that VA will not save any money in the decision to close pharmacies located in the clinics **Exhibit 4**

19. **On November 23, 2015 at 11:27 Am** (exhibit 5), budget analyst (Phil) replied to clarify his data presentation and also noted, "I was unable to locate the reference that Dr. Anoruo cited in the word document, therefore cannot validate his reference." This means that the evidenced based analysis Dr. Anoruo presented was not factored in his analysis and was not incorporated in "Bill's" decision in his response, "The Make/ buy decision represents minimal cost savings, with the majority of costs represented as cost avoidance mainly due to the extended hours in the main pharmacy."

20. The pharmacy hours was only extended by 21 hours a week. A pharmacist works 40 hours a week. This translates to **0.5 FTE pharmacist hours**. Therefore, 1.6million Dollar presented as cost savings/avoidance is erroneous because, the staff of the PCCs will be cost neutral (staff is absorbed as horizontal transfer) will be placed in both Make/Buy Column of the analysis. However, the cost of the extending the hours of operation will be placed in the **Make** column to make a difference in the analysis and factored in as \$218.882 Exhib. 3

21. Since March 07, 2016, I have worked all the extended hours at the hospital. From 6-8:00pm, we average about 10 veteran's intake; For 2 pharmacists and 2 technicians for 10

1 hour shifts on Saturdays and Sundays, we average about 30 and 20 patients respectively.
2 Majority of these patients are emergency room patients.

3 **22. In Phil's summary page 2 (exhibit 5): item 1 & 2**, he presented other qualitative aspects
4 of the analysis. While I understand the imperative of the services, item 1 options are not
5 comparable to the counseling role the clinical pharmacists (window pharmacists) play in
6 the PCCs and a critical concept in pharmaceutical care paradigm which has been proven to
7 improve patient's outcome measures and adopted by VA since the late 1990s. CMOP is
8 already in use by all the VAMC and the PCCs and not a new initiative. Item 2, is neither a
9 good reason to undermine the role the clinical pharmacists play in the Clinics nor the best
10 way to make access to care accessible to those "Who Served." It will cost millions of
11 dollars to implement as physicians, nurses, other staffing personnel will be hired and
12 equipment and other logistics are needed. This same leadership that is talking about
13 expansion built CLC building with millions of dollars of tax payer's money and furnished
14 it with state of the art equipment, **today, CLC is a "ghost town."**

15 **23** The 0.5 FTE pharmacist hour expansion as the ultimate reason for the decision to close
16 Clinics on the quantitative data analysis as presented has no sound justification, since the
17 veterans would like to keep the Clinic pharmacies open than for them to drive 70-80 miles
18 between 6pm-8pm at night and Sundays to address their pharmacy needs. Pharmacy is
19 already open on Saturdays from 8am to 6:00PM. The Las Vegas VA would open longer
20 than any other VA facilities in this part of the country including once much larger than us
21 such as Los Angeles, Dallas, Chicago, Phoenix, Denver and Salt Lake, etc. (see exhibit 6),
22 and does not have enough workload to sustain such operation as evidenced from our
23 current Saturday pharmacy workload and now presented on paragraph 21.

24 **24.** In line with the VISN 21 and 22 recommendations, Education pharmacy manager position
25 has been strategically eliminated; one of our good pharmacists who resigned her position
26 as a result of this rumored closure is not being replaced, staff that speak out against the
27 closure are being victimized and their schedule being instantly changed.
28 **25.** Plaintiff requested a compressed schedule to minimize the impact; the request and the 3
months priority time to effect such request has expired without any response.
26. The purpose of this exercise is a constructive discharge or "forced resignation" as the
impact of consolidation is not being addressed as stated by defendant. See exhibit 7.

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27. On November 23, 2015 at 12:15 Pm (exhibit 8), Bill, the former acting facility director after reading Phil's analysis attempted to put a square peg in a square whole to justify the decision to close the clinics with skewed data analysis and further noted under item #4, "Keep in mind that veteran demand for services and panel growth requires additional space in the PCCS, thus the vacated pharmacy space will be shifted in use to primary/care behavioral health which are our core missions within the PCCs."
28. The core mission of the super clinics is to have all in one services with pharmacy as the integral part in order to make access to care easy to those "Who Served".
29. He further noted in item #3, "Regarding other quantitative questions on contracts or costs, we have appendices and hard numbers to justify which you are free to discuss with the pharmacy leadership and our budget analyst (Philip Baziw)"
30. With the acting director's directive, in item 29 above, I contacted Phil and we worked on side by side comparison of the data analysis on the available data presented, forwarded him the evidenced based resources I used in validating my figures which he stated that he could not validate in paragraph 19. He confirmed receipt and its accessibility.
31. During the side by side comparison, budget analyst requested information to clarify the discrepancy in the inventory data presented in exhibit 1 in relation to actual data presented on paragraph 16 above and other vital issues that were raised during the course of the comparison.
32. We finished the side by side analysis on December 10, 2015. I requested a copy of this document multiple times and the leadership refused to make it available.
33. Like the veterans who will be severely impacted by the decision to close, the direct and indirect cost of consolidation to the VA from plaintiff which may be extrapolated to other 12 impacted employees such as travel cost, excess travel time to and from work, extra gas for transportation to work, probable loss of part time position outside the VA, and other child care expenses not included in the data analysis, but is included in my independent analysis include.
- I. Mileage @0.41cents per mile about 70 miles per day which will be about 8, 000 dollars a year because of this consolidation.
- II. Average of \$300-400 extra cost for gas per month about \$5, 000 per year

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- III. Plaintiff works about 20-30 hours a week outside the VA and makes about \$60, 000 -80, 000 a year which may be lost without compressed and set schedule. This is significant economic lose for this management and our local AFGE to ignore
 - IV. Plaintiff like all other employees may hire baby sitters or special services to assist in dropping and picking his kids from school due to this consolidation. He normally drops off his kids in school before starting work at 08:00AM and picks them up at 5pm. There is no way to accomplish this without set compressed schedule.
 - V. Plaintiff will spend approximately 2 hours a day to and from work, 10 hours a week; 40 hours a month and about \$30, 000 a year lost traveling to and from work.
 - VI. Failure to minimize this impact is forcing me to resign and forced resignation or constructive discharge is prohibited by NLRB in the National Labor Relations Act ("the Act"). See Labor-Management Reporting and Disclosure Act ("LMRDA") (29 USC §401 et seq.; 29 CFR Parts 401 to 453)

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34. **The outsourcing of only 10 days of emergency prescription is as good as nothing.**

35. The projected cost savings/avoidance of 1.6 million dollars is non-existent. As one of the impacted employees, plaintiff worked diligently with management to ensure a seamless process; that the impact of the consolidation is address and that the new projected 1.6 million dollars saving presented to the PENTAD, VISN, Under Secretary and congressional staffers to approve the closure of pharmacies in the clinics are real and not arrived at with wrong calculation, projection or misrepresentation of material fact.

36. The AFGE and management undermined the critical role pharmacists play in these clinics and unfortunately compared it to Opti-fill dispensing system used by CMOP or the Walgreen pharmacy for 10 day emergency prescription pick up. The worst of all is that those who should stand to defend the role of pharmacy role (Bryan and Meeta) are the spring board for this retrogressive consolidation exercise. While I understand their predicament as top management has descended on them to cut cost, as pharmacy professionals, they should put on their "2 hats." Their management and pharmacy professional hat and do the best for the veterans and employees since there is no cost savings involved.

37. **On January 26, 2016**, the management and AFGE undermined the negative economies of scale result of our side by side quantitative data analysis on the closure of the pharmacies

1 and issued a memorandum (Exhibit 9) to close them on March 04, 2016 without
2 negotiating the impact due to resultant pecuniary loss to plaintiffs, other affected
3 employees and the veterans.

- 4 **38.** On February 02, 2016 during the Primary Care Oversight Committee (PCOC) meeting in
5 the presence of AFGE and management, plaintiff asked, “What will happen to the decision
6 to close the pharmacies in clinics if the 1.6million cost savings and avoidance is
7 determined as non-existent based on available data? The answer plaintiff received was that
8 the closure was not about cost savings to the VA, yet the congressional staffers were
9 informed that the reason for the closure is that VA will save 1.6 million dollars. See our
10 congresswoman narrative to the Under Secretary for Health dated January 28, 2016.Exb 17
- 11 **39.** On February 11, 2016, the union instead of negotiating on the impact of consolidation as
12 mandated pursuant to 5 USC 7106 (b) (2) and (3) sent a non-commitment memorandum
13 that included among other things, “The current plan is to staff the pharmacy with an 8-4:30
14 tour and a 11:30-8pm shift.....this will stay in place for 3-4 months until management has
15 the opportunity to determine work load and shift demands. By this, Mandatory appropriate
16 arrangements for employees adversely affected by management’s exercise of authority
17 pursuant to 5 U.S.C. § 7106(b) (3) is being ignored by Leadership and AFGE.
- 18 **40.** On February 19 and 22, 2016, plaintiff sent an informal and revised informal complaint to
19 the secretary of the VA, the facility director; Client services, Washington DC; Senator
20 Harry Reid; Senator Joe Heck, Senator Dean Heller, Rep: Dina Titus, VSO Reps,
21 pharmacy management, local EEOC officer & AFGE official.
- 22 **41.** On February 22, 2016, the VA Secretary replied and instructed that his complaint was
23 forwarded to VHA leadership for appropriate attention and action.
- 24 **42.** On February 22, 2016, the chief of HR called plaintiff to address some issues raised in the
25 complaint and discuss the ramifications of the case, the role of pharmacy management,
26 AFGE in the matters presented and to advise me on some necessary steps to take to
27 appropriately channel my complaint to the leadership.
- 28 **43.** On February 22, 2016 and heeding to the chief of HR directives, a meeting to discuss the
29 impact of consolidation as it relates to plaintiff was scheduled to be held on 02/24/16 and
30 attended by the chief of HR, pharmacy director and AFGE Local president and assistant

1 president and others. Local AFGE president pulled AFGE off from the meeting and
2 presented other commitments for his action and no other meeting was scheduled.

3
4 44. On February 24, 2016, Local AFGE president ruled out AFGE from attending any further
5 meetings scheduled to discuss the impact of consolidation because plaintiff stated that he
6 contacted federal lawyers to know his rights and responsibilities with regard to the closure
7 decision and the impact instead of approaching the matter blindly

8 45. On February 24, 2016, Pharmacy director in concert with the chief HR responded to the
9 Complaint to the facility director (exhibit 11)

10 46. Concerned with the reluctance of the AFGE local authorities to address the impact of the
11 consolidation, the legally unsubstantiated claim that because plaintiff consulted federal
12 lawyers to know his rights and responsibilities and therefore AFGE is barred from

13 47. On February 26, 2016, the AFGE vice president instead of assisting the impacted
14 employees or submit plaintiff's complaint to management as recommended in comp.

15 exhibit 11 for review, presented a spurious claim that AFGE has discussed the impact and
16 implementation with employees at the outpatient Clinics and further noted that the demand
17 presented are not within AFGE's authority as document Exhibit 12. There was no such
18 meeting in any of the affected Clinics or with personnel that was directly impacted by the
19 decision as rebutted in complaint exhibit 13 based on direct communication with directly
20 affected employees.

21 PROCEDURAL HISTORY

22 49. On February 25, 2016, plaintiff contacted national AFGE office, EEOC local representative
23 and OPM manager. EEOC local representative and OPM manager both advised plaintiff
24 that the issue is not an EEOC or OPM issues and referred plaintiff to AFGE national office
25 50. On March 01, 2016, following the reluctance of the management and AFGE to address the
26 mandatory subjects of the impact of consolidation, plaintiff filled ex parte motion to extend
27 the deadline for the closure of the pharmacies in the Clinics for 60 days
28 51. On March 03, 2016, plaintiff received a memorandum from our honorable house
representative Doctor Joe Heck concerning about the complaint dated February 19 and

1 revised copy of February 22, 2016 and advised that his office is diligently working on the
2 issues raised.

3 52. On March 05, plaintiff received order dated March 03, 2010 denying the ex parte motion
4 for lack of jurisdiction because plaintiff failed to file complaint to commence an action in
5 district court and further ordered that, "Plaintiff will be given leave to refile this motions
6 after he files a complaint in this action"

7 53. Plaintiff hurriedly authored a complaint and filed it on March 07, 2016 with the hope that
8 the court will review the facts presented and inadvertently omitted to summon the
9 defendant and notice of interested parties. The summons and notice of interested parties are
10 filed today.

11 54. On April 05, 2016, I received a reply to my complaint from our honorable house
12 representative member dated March 07, 2016 with attached memorandum (exhibit 17) she
13 addressed to the Under Secretary for health in which she expressed her reservation on the
14 1.6 million dollar savings and avoidance which was the hallmark and rationale for the
15 approval to close the pharmacies located in the clinics.

16 **GOOD CAUSE EXISTS TO RESCIND THE CLOSURE DECISION OR ADDRESS THE**
17 **MANDATORY IMPACT OF CONSOLIDATION**

18 55. Our leadership, expect our elderly veterans to drive from Pahrump, Boulder city,
19 Henderson, Southeast and Southwest areas of the valley to the hospital to address their
20 pharmacy needs or that Walmart or Walgreen for pick emergency supply of medications
21 are comparable to the services our highly trained Clinical pharmacists render to the
22 veterans, nurses and providers at the primary care Clinics. Access to care which is one of
23 our core missions will be impeded. **10 days** of emergency supply at contract pharmacy is
24 good as nothing as most patients would not like to go to Walgreen and spend about 1-2
25 hours there for a 10 day supply of a prescription.

26 56. Our resource poor veterans will have a lot of out of pocket unexpected expenses. The 2
27 million dollars and the 1.6 million dollars in cost saving /avoidance will be 2 million
28 dollars deficit in the face of congress budget cut;

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57. The nonchalant attitude of the AFGC about the plight of the plaintiff and other affected employees and reluctance to address the impact of this **consolidation is worrisome**
- 58. On February 25, 2016, I contacted EEOC local representative and OPM manager. Both advised that the issue is not EEOC issues and referred plaintiff to management.**
- 59. Plaintiff contacted the secretary of the VA and his complaint was directed to appropriate VA authority which I presume was the Secretary of labor, but the message was redirected to the facility director for action. See exhibit 11.**
- 60.** Some veterans received post cards in the mail with closure notification and were confused and may still have not received the information about pharmacy closing.
- 61.** Plaintiff and other affected employees have children in school and may be forced to resign or withdraw their kids from school, pay additional before and after care or make special arrangement for pick up or drop off of the kids in school.
- 62.** Like other affected employees, plaintiff may lose about \$60-80,000 of his Part time position outside the VA which may have far reaching economic consequences on employees.
- 63.** Mandatory appropriate arrangements for employees adversely affected by management's exercise of authority pursuant to 5 U.S.C. § 7106(b) (3) is still being ignored by Leadership.
- 64.** 'Public Law 101-552 encourages using alternative means of resolving disputes among people, sections, departments and services within government agencies, between government agencies, between the government and other groups*** The law is based on Congress' finding that alternative processes, including mediation, often yield "decisions that are faster, less expensive and less contentious... [and] can lead to more creative, efficient, and sensible outcomes."
- 65.** Plaintiff has sort to resolve this matter with the management since November 06, 2015, but the leadership is not amenable to looking at the facts and still went ahead with the decision they have already made, ignored our side by side comparison which shows will be losing substantial amount of money in this exercise and our veterans will be left to suffer from the impact of this decision.
- 66.** I belief this is not what Senator Reed and other congressional staffers had intended when they put their political career on the line to ensure that the funding for the super clinics and

1 the Las Vegas medical center was approved. The benchmark used in the analysis is not
2 specific to Las Vegas VA population. Therefore, good cause exists to rescind or suspend
3 this decision to close the pharmacies located in the PCCs now.

4
5 **67.** On March 03, 2016, I received a memorandum from our honorable house representative
6 Doctor Joe Heck concerning my complaint dated February 19 and revised copy of
7 February 22, 2016. Exhibit16.

8 CAUSES OF ACTION

9 **I. FAILURE TO NEGOTIATE THE IMPACT OF CONSOLIDATION**

10 **58.** Plaintiff repeats allegations contained in preceding paragraphs by reference.

11 **59.** AFGFE and management have failed to address the impact of consolidation and are in
12 violation of 5 U.S.C. § 7106(b) (2); and (2) (3) and the Labor-Management Reporting and
13 Disclosure Act ("LMRDA") pursuant 29 USC §401 et seq.; 29 CFR Parts 401 to 453.

14 **60.** Though FSLMRS prohibits federal agencies and Unions from negotiating subjects
15 enumerated in 5 U.S.C. § 7106(a). The FSLMRS requires federal agencies to negotiate
16 mandatory subjects with unions. The FSLMRS specifically enumerates two categories of
17 mandatory subjects: (1) procedures which an agency observes in exercising its authority,
18 See 5 U.S.C. § 7106(b) (2); and (2) appropriate arrangements for employees adversely
19 affected by management's exercise of authority. See 5 U.S.C. § 7106(b) (3). These are
20 clearly defined subjects that federal agencies and unions must negotiate.

21 **61.** AFGFE and management have resolved not to review my complaint and have deliberately
22 ignored the side by side comparison of the data analysis with
23 the chief analyst and continue to present 1.6 million dollars saving and avoidance.

24 **II. THE CLOSURE OF THE PHARMACIES LOCATED IN THE PRIMARY 25 CARE CLINICS CAUSED PECUNIARY LOSS**

26 **62.** Plaintiff repeats allegations contained in preceding paragraphs by reference.

27 **63.** Management and AFGFE violated 5 USC § 6120-6127; Plaintiff requested compressed and
28 flexible tour of duty to address the impact of consolidation on February 03, 2016 (Exhibit
7: pg. 34 and reinforced the request on February 17 & 18, 2016 pg. 32 and February 23,

1 2016. The management and AFGE ignored the request or absconded from the discussion
2 for unjustified unwarranted personnel action with no immediate future date scheduled for
3 negotiation. This is also a violation of due process clause of fifth and fourteenth
4 amendment of the constitution of the United States and the Labor-Management Reporting
5 and Disclosure Act ("LMRDA") pursuant 29 U.S.C. § 411-412.
6 64. Data presented based on our side by side comparison shows that VA will not save a dime
7 not to talk of 1.6 million Dollars cost savings or avoidance that was presented to get
8 approval for the closure, plaintiff and other impacted employees, veterans are
9 economically harmed due to this decision.
10 65. Misrepresentation is a tort, or a civil wrong. This means that a misrepresentation can create
11 civil liability if it results in a pecuniary loss. Congress waived sovereign immunity in cases
12 seeking injunctive or other nonmonetary relief against the United States in a 1976
13 amendment to the Administrative Procedure Act (5 U.S.C.A. §§ 702-703).

14 **111: CONSTITUTIONAL VIOLATION OF THE 5TH AND 14 AMENDMENT CLAUSE**

15 66. Constitutionalism entails a commitment that government should be limited by law and
16 accountable under law for the protection of fundamental rights; if the "essence of civil
17 liberty" is that the law provide remedies for violations of rights, immunizing government
18 from ordinary remedies is in considerable tension with all but the most formalist
19 understandings of law and rights.
20 67. Plaintiff repeats allegations contained in preceding paragraphs by reference.
21 68. Management and AFGE violated 5 USC § 6120-6127; Plaintiff requested compressed and
22 flexible tour of duty to address the impact of consolidation on February 03, 2016 (Exhibit
23 7: pg. 34 and reinforced the request on February 17 & 18, 2016 pg. 32 and February 23,
24 2016. The management and AFGE ignored the request or absconded from the discussion
25 for unjustified unwarranted personnel action with no immediate future date scheduled for
26 negotiation. This is also a violation of due process clause of fifth and fourteenth
27 amendment of the constitution of the United States and the Labor-Management Reporting
28 and Disclosure Act ("LMRDA") pursuant 29 U.S.C. § 411-412.
 69. Data presented based on our side by side comparison shows that VA will not save a dime
 not to talk of 1.6 million Dollars cost savings or avoidance that was presented to get

1 approval for the closure, plaintiff and other impacted employees, veterans are
2 economically harmed due to this decision.

3 70. Misrepresentation is a tort, or a civil wrong. This means that a misrepresentation can create
4 civil liability if it results in a pecuniary loss. Congress waived sovereign immunity in cases
5 seeking injunctive or other nonmonetary relief against the United States in a 1976
6 amendment to the Administrative Procedure Act (5 U.S.C.A. §§ 702–703).

7 **PRAYER FOR RELIEF**

8 **WHEREOF Plaintiff demands judgment against Defendant as follows:**

- 9
- 10 1. A declaration that defendant through its agents dishonestly avoided to negotiate the
11 impact of consolidation and misrepresented material fact to gain approval of the
12 closure of pharmacy with a resultant pecuniary loss to the plaintiff
 - 13 2. That plaintiff can seek injunctive or other nonmonetary relief against the United States
14 pursuant to 1976 amendment to the Administrative Procedure Act (5 U.S.C.A. §§ 702–
15 703), for violation of Federal Service Labor-Management Relations Statute
16 ("FSLMRS") 5 USC 7106 (b)(2) and (3) pursuant to the Labor-Management
17 Reporting and Disclosure Act ("LMRDA") 29 U.S.C. § 411-412.
 - 18 3. Address and minimize the impact of consolidation to plaintiff as presented in item 26
19 above by offering him and including compressed set schedule of 12 and 10 hour shifts.
20 Plaintiff is not asking for “the head of John the Baptist”.
 - 21 4. Rescind the decision closing pharmacies located in the Clinics or alternatively re-open
22 two most distant pharmacies located in the clinics and Pahrump to make access to care
23 easy for veterans.
 - 24 5. Defendant should refrain from citing \$1.6 cost savings/ avoidance as a rationale for the
25 closure decision, delete this remark from website:
26 www.lasvegas.va.gov/services/pharmacy.asp; and stop telling the congressional
27 staffers, VSO and other stake holders of such or that las Vegas is the only VA that have
28 pharmacy services in the Clinics unless proven wrong.
 6. Any other remedy the court may deem fit, fair and proper for justice, equity and
fairness.

CONCLUSION:

1 The management has ignored the outcome of our side by side comparison of the data
2 presented in order to forge ahead with their prerogative decision to close the pharmacies in the
3 clinics, partially addressed the real impact of the consolidation to the veteran's "WHO SERVED,"
4 the plaintiff and the employees; undermined the critical role clinical pharmacists play in the PCCs
5 on a daily basis and negated that VA will lose substantial money in the closure decision due to
6 contract cost, negative economies of scale, cost of convenience to the veterans; and direct (cost
7 of overnight narcotic mail) and indirect cost to the impacted employees. Cost containment
8 initiative due to budget cut in congress initially presented is now replaced with space allocation to
9 mental health and primary care speculated expansion. The veterans and staff have the need to
10 know that the decision will have a positive impact and will produce the projected cost
11 savings/avoidance and safe tax payer's money. The decision to close should be rescinded or
12 suspended because the impact to the veterans and general public is too great to be overlooked.

13 Respectfully submitted this 6TH day of June 2016,

14 
15 By: _____

16 Dr. Joseph Anoruo
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18 Las Vegas, NV 89139
19 Tel: (702) 580-6676
20 Email: janoruo@hotmail.com
21 Plaintiff Pro Se

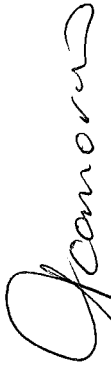
Certificate of Delivery:

1 Today, 6th day of June 2016, I certify that a copy of this first amended complaint, motion for
2 leave to amend complaint, and renewed ex parte motion is sent to the following persons of record
3 via USPS mail.

4 **Mr. DANIEL G. BOGDEN**
5 U.S Attorney for the District of Southern Nevada
6 Lloyd George U.S Courthouse
7 333 Las Vegas Blvd South
8 Las Vegas, NV 89101
9 Phone: 702-388-6336

10 Joseph E. Moody
11 President, AFGE Union Local 1224 (Dist. 12)
12 V/A Southern Nevada Healthcare System
13 5892 Losee Rd, Suite 132-224
14 N. Las Vegas, NV 89081
15 Phone No. 702-791-9000 ext 19477
16 Fax No. 702-791-9117
17 L1224exeofc@gmail.com

18 Dated this 6th day of June, 2016.

19 
20 By: _____
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23 Las Vegas, NV 89139
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25 Email: janoruo@hotmail.com
26 Plaintiff Pro Se
27
28