FAC-Closure of pharmacies
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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA.

JOSEPH CHIDI ANORUO, Plaintiff, vs. ROBERT A. McDonald , Secretary, Department of Veterans Affairs, Joseph Moody, AFGE local President Defendants	Case No. 2:16-CV-00441-GMN-NJK AMENDED COMPLAINT ON THE CLOSURE OF PHARMACIES LOCATED AT THE VA OF SOUTHERN NEVADA PRIMARY CARE CLINICS AND FAILURE TO NEGOTIATE THE MANDATORY SUBJECTS OF THE IMPACT OF CONSOLIDATION

Plaintiff, Joseph Anoruo, moves this motion to seek injunctive or other nonmonetary relief against the United States pursuant to 1976 amendment to the Administrative Procedure Act (5 U.S.C.A. §§ 702–703), for violation of Federal Service Labor-Management Relations Statute ("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 immunity[1]. 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".

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

Respectfully submitted this 6th day of June 2016,

By: 

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5 U.S.C.A. §§ 703, "The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review 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 I224 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.

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

STATEMENT OF THE ISSUE

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

Whether, the decision to close the pharmacies located in the clinic based on 1.6 million dollars cost saving and avoidance was begotten by skewed data analysis and misrepresentation of material fact[3]

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

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

INTRODUCTION

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

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[3] if the "alleged misrepresentations are merely another way of asserting that a breach of contract occurred. . . the claim is not barred simply because it might also be stated as a tort." Olin Jones Sand co v. United States, 225 Ct. Cl. at 745 (1980) (finding that a claim was justiciable only because the alleged 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)."

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

It is true plaintiff has filed 2 employments cases against the VA which stems from management unfair treatment and misrepresentations. The district court orders of August 23, 2012 and February 18, 2014 as indicated by the defendant are indisputably a travesty of justice[4]. In the first case, Dr. Anoruo contacted EEOC on Julye 30, 2010, 36 days after the final Act in continuing violation of employment claims. In the second case, summary judgment was erroneously granted before timely responses to motion to amend doc 114(dkt #117) and correct order 109 (Dkt. 118) were filed and still pending in violation of due process clause.

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

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

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[4] See Anoruo v.Shinseki, No. 11-cv-02070-MMD-CWH, 2012 WL 364844,at *3(d.NEV.August,2012) (dismissing Anoruo's second amended complaint and employment claims as time barred). *At court of Federal claims the same claim, see Anoruo v United States Case no: 15-658C 03'28/16 (pg. 16), 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)

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

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

Most of our Veterans are senior citizens who at times find it difficult to get from point A to point B. The microcosmic analysis of management that closing pharmacies located in the Clinics and send veterans to Walgreen or Walmart to pick up 10 day emergency medication undermines the pharmaceutical care paradigm which is why pharmacist are put at the front windows in the VA. This practice is a not a norm, but adopted by the VA in order to embrace the ever changing 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

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

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

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

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

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

Now with the closure decision, we will dispose the Script pro dispensing system; may revert back to our old ways because we want to centralize the pharmacy, cut cost that we may not realize in the expense of our core values of veteran focused centered approach to care. This can 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 monthly meeting that the leadership and PENTAD has approved the closure of the pharmacies located in the Clinics. "AFGE and the congressional staffers have been notified and the VSOs will be notified today" see Exhibit 14

2. On October 29, 2015 during emergency pharmacy management meeting to discuss the above information, the management denied information and called it a rumor, blamed HAS for bringing the matter to the attention of the staff in order to open proactive discussion on the proposed realignment initiative in order to ensure a seamless process.

3. The pharmacy Leadership admitted that the work group requested data from pharmacy and pharmacy submitted the requested data and thereafter stated that pharmacy located in the PCCs are closing because the VA will save 2 million dollars by way of inventory management, contract and personnel cost.

4. In the skewed data presented to achieve 2 million dollars, there was obvious inflation of Clinic inventories to a staggering **2.964.405.65 million dollars** in inventory cost **(Exhibit 1-top portion).**

5. **In consolidation without staff lay off, i**nventory is cost neutral in **Make/ Buy analysis** and remotely controlled by pharmacy management. Most prescriptions are processed and are usually mailed to patients through consolidated mail order pharmacy (CMOP) except most narcotics which are processed for Clinic pick up or mailed out from the VAMC.

6. With this decision to close, cost of mailing Narcotics will rise in geometric progression. This fact is overlooked by leadership. AWARD winning CMOP concept as being presented is not a new initiative and has been in use since 2003 and beyond.

7. **On November 06, 2015,** I sent out a detailed memorandum against the rumored closure of the Pharmacies located in the PCC and rebutted the data presented as detailed in **Exhibit 2: pg: 4-8.**

8. **On November 06, 2015,** following my memorandum, Bryan sent out a rebuttal e-mail explanation to some of my indisputable facts including the inflated data used in the 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**.

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

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

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

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

24. In line with the VISN 21 and 22 recommendations, Education pharmacy manager position has been strategically eliminated; one of our good pharmacists who resigned her position as a result of this rumored closure is not being replaced, staff that speak out against the closure are being victimized and their schedule being instantly changed.

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.

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

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)

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

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

38. On February 02, 2016 during the Primary Care Oversite Committee (PCOC) meeting in the presence of AFGE and management, plaintiff asked, "What will happen to the decision to close the pharmacies in clinics if the 1.6million cost savings and avoidance is determined as non-existent based on available data? The answer plaintiff received was that the closure was not about cost savings to the VA, yet the congressional staffers were informed that the reason for the closure is that VA will save 1.6 million dollars. See our congresswoman narrative to the Under Secretary for Health dated January 28, 2016.Exb 17

39. On February 11, 2016, the union instead of negotiating on the impact of consolidation as mandated pursuant to 5 USC 7106 (b) (2) and (3) sent a non-commitment memorandum that included among other things, "The current plan is to staff the pharmacy with an 8-4:30 tour and a 11:30-8pm shift.....this will stay in place for 3-4 months until management has the opportunity to determine work load and shift demands. By this, Mandatory appropriate arrangements for employees adversely affected by management's exercise of authority pursuant to 5 U.S.C. § 7106(b) (3) is being ignored by Leadership and AFGE.

40. On February 19 and 22, 2016, plaintiff sent an informal and revised informal complaint to the secretary of the VA, the facility director; Client services, Washington DC; Senator Harry Reid; Senator Joe Heck, Senator Dean Heller, Rep: Dina Titus, VSO Reps, pharmacy management, local EEOC officer & AFGE official.

41. On February 22, 2016, the VA Secretary replied and instructed that his complaint was forwarded to VHA leadership for appropriate attention and action.

42 On February 22, 2016, the chief of HR called plaintiff to address some issues raised in the complaint and discuss the ramifications of the case, the role of pharmacy management, AFGE in the matters presented and to advise me on some necessary steps to take to appropriately channel my complaint to the leadership.

43. On February 22, 2016 and heeding to the chief of HR directives, a meeting to discuss the impact of consolidation as it relates to plaintiff was scheduled to be held on 02/24/16 and attended by the chief of HR, pharmacy director and AFGE Local president and assistant

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

44. On February 24, 2016, Local AFGE president ruled out AFGE from attending any further meetings scheduled to discuss the impact of consolidation because plaintiff stated that he contacted federal lawyers to know his rights and responsibilities with regard to the closure decision and the impact instead of approaching the matter blindly
45. On February 24, 2016, Pharmacy director in concert with the chief HR responded to the Complaint to the facility director (exhibit 11)
46. Concerned with the reluctance of the AFGE local authorities to address the impact of the consolidation, the legally unsubstantiated claim that because plaintiff consulted federal lawyers to know his rights and responsibilities and therefore AFGE is barred from discussing impact of consolidation, plaintiff contacted national AFGE for proper attention
47. On February 26, 2016, the AFGE vice president instead of assisting the impacted employees or submit plaintiff's complaint to management as recommended in comp. exhibit 11 for review, presented a spurious claim that AFGE has discussed the impact and implementation with employees at the outpatient Clinics and further noted that the demand presented are not within AFGE's authority as document Exhibit 12. There was no such meeting in any of the affected Clinics or with personnel that was directly impacted by the decision as rebutted in complaint exhibit 13 based on direct communication with directly affected employees.

PROCEDURAL HISTORY

49. On February 25, 2016, plaintiff contacted national AFGE office, EEOC local representative and OPM manager. EEOC local representative and OPM manager both advised plaintiff that the issue is not an EEOC or OPM issues and referred plaintiff to AFGE national office
50. On March 01, 2016, following the reluctance of the management and AFGE to address the mandatory subjects of the impact of consolidation, plaintiff filled ex parte motion to extend the deadline for the closure of the pharmacies in the Clinics for 60 days
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

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

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

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

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

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

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

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