

NO. _____

MUNA AL-DAHAN
Plaintiff,

V.

PARKVIEW PHARMACY, INC.,
D/B/A AMEX PHARMACY NO. 5
AND AVINASH ISAAC
SHIVSHANK
Defendants.

§ IN THE DISTRICT COURT
§
§
§ _____ JUDICIAL DISTRICT
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§
§
§ OF HARRIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Muna Al-Dahan (“Al-Dahan”), hereinafter called Plaintiff, complaining of Parkview Pharmacy Inc., d/b/a Amex Pharmacy No. 5 and Avinash Isaac Shivshank (“Amex Pharmacy” or “Defendants”), and for cause of action shows unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

1. This suit is brought pursuant to Rule 190.3 of the Texas Rules of Civil Procedures and is to be administered under Discovery Control Plan Level 2.
2. Plaintiff demands a jury trial in this cause as to any and all issues triable to a jury.

PARTIES AND SERVICE

3. Plaintiff, Muna Al-Dahan, is an individual residing in Harris County, Texas, whose address is 5466 Imogene St, Houston, Texas 77096. The last three numbers of Muna Al-Dahan's driver's license number are 905. The last three

numbers of Muna Al-Dahan's social security number are 2736.

4. Defendant Parkview Pharmacy Inc., d/b/a Amex Pharmacy No. 5, a domestic for-profit corporation based in Texas, is organized under the laws of the State of Texas, and service of process on the Defendant may be effected pursuant to sections 5.201 and 5.255 of the Texas Business Organizations Code, by serving the registered agent of the corporation, Avinash Shivshanker, at 5420 Bellaire Blvd., Bellaire, Texas 77401, its registered office. Service of said Defendant as described above can be effected by personal delivery.

5. Defendant Avinash Isaac Shivshank, may be served with process at his home at the following address: 6003 Woodrock Ln, Houston, TX 77008. Service of said Defendant as described above can be effected by personal delivery.

JURISDICTION AND VENUE

6. The subject matter in controversy is within the jurisdictional limits of this court.

7. Plaintiff seeks:

a. monetary relief over \$250,000 but not more than \$1,000,000.

8. This court has jurisdiction over the parties because Defendants have principal offices in Harris County, Texas are/or are residents of Harris Count, Texas.

9. Venue in Harris County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in

this county.

FACTS

10. Plaintiff is a board-certified pharmacist and commenced her employment at Defendant Parkview Pharmacy Inc., d/b/a Amex Pharmacy No. 5 (“Amex Pharmacy”) located at 5420 Bellaire Blvd., Bellaire, Texas 77401 as a Pharmacist-In-Charge (“PIC”) in June 2009.

11. Amex Pharmacy is in the business of providing pharmaceutical services, including to facilities providing hospice services, and is licensed to purchase and dispense Schedule II, III, IV and V controlled substances. Around five (5) years prior to this suit, Defendant Avinash Isaac Shivshanker (“Shivshanker”) acquired Amex Pharmacy.

12. A Schedule II drug (also known as a C2 substance or C-11 drug) is considered to have a high potential for abuse. As such, prescriptions for controlled substances are governed by state and federal regulations, which require a written prescription by a practitioner (e.g., physician, certified nurse practitioner, or physician's assistant), except in cases of emergency.¹ In the event of an emergency, only a practitioner can call in the prescription, which is limited to a 72-hour supply, and the practitioner must send a written, signed prescription to the dispensing pharmacy within seven (7) days.²

13. Defendant Amex Pharmacy does not make policies and procedures regarding dispensing controlled substances available to pharmacist or staff.

¹ See Tex. Health & Safety Code § 481.074(b); see also 21 C.F.R. §1306.11(a).

² See Tex. Health & Safety Code § 481.074(c); see also 21 C.F.R. § 1306.05.

14. Amex Pharmacy does not provide training or orientation its PIC's who charged with oversight of Amex Pharmacy's staff pharmacist and dispensing of controlled substances.

15. Amex Pharmacy stresses convenience for clients over compliance with state and federal regulations regarding dispensing controlled substances.

16. Plaintiff's salary at Amex Pharmacy was \$57.50 per hour and she worked an average of 32 hours per week, for a base salary of \$1,840.00 per week, or \$95,680.00. During her eleven (11) and half years at Amex Pharmacy, she received pay raises.

17. Plaintiff has been a practicing pharmacist since 1977 and received her Texas Board Certification in 1999. She also previously served as a PIC for about 10 years at Eckerd Pharmacy prior to the position at Amex Pharmacy. As the PIC, Plaintiff is designated as the pharmacist who has the authority or responsibility for the pharmacy's compliance with statutes and rules relating to the practice of pharmacy.³ Plaintiff was responsible for all the day to day activities of the pharmacy, including and not limited to: ensuring the accuracy of dispensed medications, supervising and monitoring pharmacy's staff, including the owner (s), monitoring the delivery of medications to patients (both in store delivery and mail delivery), overseeing compliance with the federal rules such as HIPAA, maintaining inventory records, including controlled substances, verifying the originality of prescriptions for controlled substances by contacting prescribing physicians and

³ Tex. Occ. Code § 551.003(29).

entering information in the government website, and more.⁴

18. After the change in ownership, Plaintiff became increasingly concerned that Amex Pharmacy was engaged in unlawfully filling prescriptions of controlled substances. On several occasions, Shivshanker demanded Plaintiff to fill orders for controlled substances without a valid written prescription from an authorized physician. The orders were placed by unqualified individuals or physicians related by blood or friendship to Shivshanker.

19. Shivshanker repeatedly instructed Plaintiff to violate the law and pressure Plaintiff to dispense controlled substances without verifying the validity of the prescriptions.

20. After continuous harassment by Shivshanker, Plaintiff contacted the Texas State Board of Pharmacy to confirm her understanding of the laws regarding prescribing, filling and reporting prescriptions for controlled substances.⁵ After confirming her understanding of the law, Plaintiff refused to comply with Defendants' demand to dispense the controlled substances without a valid prescription because the actions directed by Defendants constitutes as a violation of the Texas Control Substances Act and the federal regulation for controlled substances.⁶

21. In response to Plaintiff's consistent refusals to commit illegal acts, Amex Pharmacy threaten to fire her and stated, "I am the owner and I make decisions and not the Board."

⁴ *See, Id.*

⁵ *See* Tex. Health & Safety Code § 481.074(c); see also 21 C.F.R. § 1306.05.

⁶ *See* Tex. Health & Safety Code § 481.074(c); see also 21 C.F.R. § 1306.05.

22. The last altercation between Plaintiff and Shivshanker occurred on or about January 15, 2021. Plaintiff discovered two incidents of refilled medications that were undelivered and had remained shelved for over a month. Plaintiff attempted to contact both of the patients to provide a reminder that their prescriptions were ready. One patient notified Plaintiff that he no longer wanted the prescription, and the second patient could not be reached. Plaintiff followed the Texas State Board of Pharmacy (TSBP) Guidelines and reversed the insurance claims for both prescriptions.⁷

23. Within thirty (30) minutes of contacting the patients, Defendant Shivshanker arrived at the location and began to scream at Plaintiff for contacting the patients and reversing the insurance claims on the undelivered prescriptions. Shivshanker stated that Plaintiff had no right as the PIC to call patients and to refund the insurances for the medication.

24. Plaintiff attempted to explain the TSBP rules and her authority, as the PIC, under the law. Plaintiff explained that she was following the guidelines set by the TSBP rules, which requires a pharmacy to reimburse or credit the entity that paid for the drug including the state Medicaid program for an unused drug returned to the pharmacy.⁸

25. Shivshanker directed Plaintiff to create and distribute falsified information in aide of a fraudulent insurance claim. The actions directed by Plaintiff's employer constitutes insurance fraud under Tex. Pen. Code § 35.02.

⁷ 22 Tex. Admin. Code § 291.8(4)(B).

⁸ 22 Tex. Admin. Code § 291.8(4)(B).

Plaintiff refused to follow through with Defendants' instructions regarding the fraudulent insurance scheme.

26. This was not the first incident of attempted insurance fraud by Defendants. Around two (2) year prior to this suit, an insurance company audited Defendant for failing to deliver medications to patients. The audit revealed that Defendant indeed was charging the insurance company for undelivered medications and the charges needed to be reversed.

27. After Plaintiff's refusal to commit insurance fraud, Shivshanker continued to be hostile and screamed at Plaintiff "this is my business, and I am here to make money and I am your boss and I tell you what to do." Shivshanker threatened Plaintiff that if she did not follow his orders that a new PIC will. Shivshanker stated that a two week notice of resignation must be provided if Plaintiff did not comply. After years of harassing Plaintiff to follow through with the illegal acts, Defendants ultimately terminated Plaintiff for her refusal to comply and was given a two-week notice.

**WRONGFUL DISCHARGE FOR REFUSAL
TO PERFORM AN ILLEGAL ACT BY PARKVIEW PHARMACY, INC., D/B/A
AMEX PHARMACY NO. 5**

28. Plaintiff incorporates by reference the foregoing allegations as if fully rewritten herein.

29. Plaintiff was wrongfully discharged under the case of *Sabine Pilot Service, Inc. v. Hauck*, 687 S.W.2d 733 (Tex. 1985). In *Sabine Pilot*, the Texas Supreme Court provided a claim to terminated employees who could prove that

they: (1) were asked (implicitly or explicitly) to commit an illegal act carrying criminal penalties; (2) refused to engage in the illegal act; (3) were discharged; and (4) the sole reason for their discharge was the refusal to commit the illegal act.⁹

This specific common law exception to the employee-at-will doctrine has been judicially created in order to prevent the sort of egregious actions described herein.

Plaintiff was an at-will employee for Defendants and fulfills each requirement of the Sabine Pilot exception to the at-will employment rule.

30. By demanding that Plaintiff violate the law, Amex Pharmacy was forcing Plaintiff to choose between keeping her job and committing a number of criminal acts described under federal and state law. Defendants' illegal demands included, but not limited to, the following:

- Plaintiff was instructed to dispense controlled substances without proper prescriptions in violation of 21 USC § 829; 21 CFR §1306.11; Texas Health and Safety Code § 481.074(a)(1) and § 481.129; and Texas Admin. Code, Title 22, Part 15, Chapter 315.
- Plaintiff was asked to commit fraud and/or act as an accessory to fraud in violation of Texas Penal Code § 35.02 for insurance fraud.

31. Defendants' sole reason for discharging Plaintiff was for her refusal to violate the criminal statutes cited above, or to cause others to violate such statutes, as instructed by Defendants. Plaintiff was unlawfully forced to choose between risking criminal liability or being discharged.

32. Defendants' practice, conduct and actions were willful. Defendants knew that the acts were criminal.

33. As a result of her wrongful discharge by Defendants, Plaintiff has

⁹ *Sabine Pilot Service, Inc. v. Hauck*, 687 S.W.2d 733 (Tex. 1985).

suffered damages, including back pay, front pay, loss of benefits, loss of earning capacity past and future mental anguish and emotional distress, punitive damages, and court costs, for which Plaintiff sues.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

34. Defendants, intentionally or recklessly threatened Plaintiff to commit illegal acts and caused Plaintiff to be terminated due to her refusal. Defendants' conduct was extreme and outrageous and proximately caused Plaintiff severe emotional distress. Plaintiff suffered damages for which Plaintiff herein sues.

DAMAGES

35. As a direct and proximate result of the aforementioned illegal and outrageous actions, Plaintiff has sustained actual damages for the injury to character or reputation; personal humiliation; mental anguish and emotional distress; pain and suffering; loss of wages and commissions, both past and future; loss of employee benefits, both past and future; and loss of earning capacity. The trier of fact will determine the compensation amount.

EXEMPLARY DAMAGES

36. Defendants' actions were harsh, oppressive, and malicious. The wrong done by Defendants was aggravated by the kind of willfulness, wantonness, and malice for which the law allows the imposition of exemplary damages. Defendants acted with an evil intent to harm Plaintiff. The conduct was intentional and without justification or excuse. Plaintiff, therefore, seeks exemplary damages in a sum to be determined by the trier of fact to serve as punishment to deter Defendants from

such conduct in similar situations.

SPECIFIC RELIEF

37. Plaintiff seeks the following specific relief which arises out of the actions and/or omissions of Defendants described hereinabove:

- a. Reinstatement Plaintiff to the position and pay grade which Plaintiff held but for the unlawful employment actions of Defendants;
and
- b. Reinstatement all benefits to which Plaintiff was entitled but for the unlawful employment actions of Defendants.

JURY DEMAND

38. Plaintiff requests a jury trial in this cause pursuant to Rule 216 of the Texas Rules of Civil Procedure, and deposits contemporaneously with the filing of this Original Petition, with the District Clerk of Harris County, Texas, the jury fee.

PRAYER

WHEREFORE, Plaintiff respectfully prays for the following relief:

- a. Judgment against Defendants for all actual, compensatory, special, general, direct, consequential and pecuniary damages incurred by Plaintiff, including, but not limited to, injury to character or reputation; personal humiliation; mental anguish and emotional distress; pain and suffering; loss of wages/commissions, both past and future; loss of employee benefits, both past and future; and loss of earning capacity;
- b. Judgment against Defendants for exemplary and punitive damages as determined by the trier of fact;
- c. Pre-judgment interest at the maximum legal rate;
- d. Post-judgment interest at the maximum legal rate until paid;
- e. Costs; and

- g. Such other and further relief, at law or in equity, general or special to which Plaintiff may show he is justly entitled.

Respectfully submitted,

HAYES HUNTER PC

/s/ Charles Clinton Hunter

By: _____

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PLAINTIFF HEREBY DEMANDS TRIAL BY JURY