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STATE OF ARIZONA
MARICOPA COUNTY SUPERIOR COURT

TIMOTHY COSTELLO, an individual

Plaintiff,

vs.

MARICOPA COUNTY SPECIAL
HEALTH CARE DISTRICT, a body politic,
Defendant.

CV 2020-051205

VERIFIED COMPLAINT

Plaintiff Timothy Costello ("Plaintiff"), by and through undersigned counsel, seeks solely non-monetary relief in this Verified Complaint against Defendant Maricopa County Special Health Care District, doing business as "Valleywise Health" ("Defendant" or "Valleywise") as follows:

THE PARTIES

1. Plaintiff Timothy Costello is a married man and a resident of Maricopa County, Arizona, and, at all relevant times in this Complaint, an "employee" of Defendant.

2. Defendant Maricopa County Special Health Case District is a local governmental entity and body politic established pursuant to A.R.S. § 48-5501, *et seq.* This Defendant owns and operates a hospital in Maricopa County, Arizona, is a public health care provider, and was Plaintiff's "employer" within the meaning of Arizona medical marijuana laws at all times relevant hereto.

1 3. At all times pertinent to this Complaint, all Valleywise managerial employees
2 involved herein were acting within the course, scope and authority of their employment by
3 Valleywise; and as a result thereof, Defendant is responsible and liability is imputed for the acts
4 and omissions of its management officials, as alleged herein, under the principle of *respondeat*
5 *superior*, agency, and/or other applicable law.

6 **JURISDICTION, VENUE, DISCOVERY TIER**

7 4. This Court has jurisdiction to hear and determine this action and to grant the relief
8 requested pursuant to article 6 § 14(1) of the Arizona Constitution.

9 5. Venue is proper in this Court as all acts alleged herein occurred in Maricopa County,
10 Arizona.

11 6. To the extent that any discovery is required in this matter at all, Plaintiff contends
12 that this matter should be considered a “Tier 1” matter for purposes of Rule 26.2.

13 **ALLEGATIONS COMMON TO ALL CLAIMS**

14 7. Mr. Costello has been a registered nurse licensed by the Arizona Board of Nursing
15 (“ABN”) since April 1, 2013.

16 8. Plaintiff is 42 years of age.

17 9. Plaintiff was born and grew up in Long Island New York.

18 10. He went into the United States Air Force at age 21 as military police.

19 11. He spent 6 years on active duty.

20 12. In 2006, he entered the Air Force reserves as a medic.

21 13. In 2008, he entered the NY State Guard as a Laboratory Tech.

22 14. In July 2009, Plaintiff moved to Arizona.

23 15. In 2013, Plaintiff became a registered nurse.

24 16. On or about March 24, 2019, Plaintiff entered the employ of Valleywise as a nurse.

25 17. Plaintiff has worked continuously for Valleywise since then without disciplinary or
26 performance issues.

27 18. Plaintiff has suffered from significant health issues since his time in the military.

28 19. For example, Plaintiff suffers from sleep disorders resulting from his time in the



1 military, where he would take ephedrine pills in the military to stay awake, and then take Tylenol
2 PM (or its equivalent) to go to bed.

3 20. Plaintiff (and many of his fellow service men and women) utilized this routine during
4 his entire time in the military and Plaintiff has had sleep issues ever since then.

5 21. Additionally, Plaintiff has had multiple back injuries, requiring frequent trips to
6 urgent care clinics for back pain.

7 22. In 2011, Plaintiff was informed by a Chiropractor that he had Lordosis - excessive
8 inward curvature of the spine.

9 23. In or around 2016, Plaintiff severely injured his back while working out and could
10 not walk for 5 weeks.

11 24. Plaintiff obtained an MRI which revealed that he had bulging disks in L4 and L5,
12 spinal stenosis and degenerative spinal disease.

13 25. Since that time, Plaintiff has been in chronic pain, with levels varying from serious
14 to extreme.

15 26. For example, Plaintiff injured his back lifting a patient that forced him to wear a
16 "tens" machine just to be able to walk at work.

17 27. Because of the severity of his back injuries, Plaintiff has been prescribed multiple
18 medications to seek pain relief.

19 28. Plaintiff has been prescribed a variety of muscle relaxers, opioids, Tramadol, and
20 Xanax to sleep at night.

21 29. After researching the significant negative side effects (including liver toxicity,
22 tolerance build-up, and threat of addictiveness) of these pharmacological pain management
23 techniques, Plaintiff chose to give up continuing his pain management using these pills.

24 30. After careful research, Plaintiff qualified for, applied for, and received his Arizona
25 medical marijuana card on December 24, 2019.

26 31. To maintain full integrity and avoid any conflict with Valleywise, Plaintiff
27 preemptively declared his cardholder status to Valleywise's employee health department on or
28 about Jan 2, 2020 - though he was not required to do this preemptively by state law.



1 32. Plaintiff has temporarily held his rights to use medical marijuana in abeyance to
2 ensure that he does not risk his employment with Valleywise.

3 33. The responding employee stated that she needed to research the issue and seek
4 clarification from Valleywise management officials.

5 34. On January 9, 2020, after further inquiry, Plaintiff received a written response
6 stating: "I am sorry for the delay. I took this to the top leadership. The response received from the
7 Chief Nursing Officer indicates that safety sensitive positions can not be helped if tests come back
8 positive for Marijuana-even with a card."

9 35. Plaintiff sent a follow-up email seeking to clarify with state law, and received no
10 response.

11 36. Valleywise has refused to engage or discuss the issue with Plaintiff ever since.

12 37. Based on the response attributed to Valleywise's Chief Nursing Officer, Plaintiff
13 would be terminated by Valleywise if he tests positive for inactive marijuana metabolites even if
14 he has a card.

15 38. Plaintiff has sought experimental treatments (not involving marijuana or
16 pharmacological solutions) for his pain, but with varying results.

17 39. Plaintiff desires to use medical marijuana in accordance with the law to treat his
18 significant chronic pain and sleeplessness.

19 40. Valleywise has a policy and/or practice of refusing to recognize the use of medical
20 marijuana under state law and therefore considers marijuana an illegal controlled substance
21 regardless of whether the employee has a valid Arizona medical marijuana card.

22 41. Despite medical marijuana being authorized by Arizona law, Valleywise treats
23 medical marijuana cardholders with more hostility than it treats nurses with addiction or other
24 substance abuse disorders, offering them services and continued employment through the
25 CANDO program.

26 42. Plaintiff seeks only declaratory, injunctive, special action, and other non-monetary
27 relief in this matter.

28 43. All conditions precedent to this lawsuit have occurred or been satisfied.



1 **FIRST CAUSE OF ACTION - AMMA DISCRIMINATION**

2 44. By reference hereto, Plaintiff hereby incorporates the preceding paragraphs.

3 45. Under the Arizona Medical Marijuana Act, the public policy of the State of Arizona
4 makes it unlawful for Defendant as Plaintiff's "employer" to: "discriminate against a person in
5 hiring, termination or imposing any term or condition of employment or otherwise penalize a
6 person based upon either: 1. The person's status as a cardholder. 2. A registered qualifying
7 patient's positive drug test for marijuana components or metabolites, unless the patient used,
8 possessed or was impaired by marijuana on the premises of the place of employment or during the
9 hours of employment." A.R.S. § 36- 2813(B).

10 46. Defendant has announced its intention to terminate Plaintiff, whom Defendant is
11 actually aware is a cardholder, if he tests positive marijuana components or metabolites, regardless
12 of whether Plaintiff used, possessed or was impaired by marijuana on the premises of the place of
13 employment or during the hours of employment.

14 47. Plaintiff has no adequate remedy at law for Defendant's announced intentions to
15 terminate Plaintiff were he to exercise his rights under state law.

16 48. Defendant should be enjoined from discrimination against Plaintiff in violation of
17 A.R.S. § 36-2813.

18 **SECOND CAUSE OF ACTION - SPECIAL ACTION**

19 49. By reference hereto, Plaintiff hereby incorporates the preceding paragraphs.

20 50. Defendant is a public body.

21 51. Plaintiff has standing to bring a claim because his exercise of rights under state law
22 would result in his termination by Defendant.

23 52. By threatening to terminate Plaintiff, a valid medical marijuana cardholder, simply
24 if he were to test positive marijuana components or metabolites, regardless of whether Plaintiff
25 used, possessed or was impaired by marijuana on the premises of the place of employment or
26 during the hours of employment, the Defendant has a) failed to perform a duty required by law
27 not to discriminate as to which Defendant has no discretion; and/or b) proceeded or is threatening
28 to proceed without or in excess of jurisdiction or legal authority.



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27 not to discriminate as to which Defendant has no discretion; and/or b) proceeded or is threatening
28 to proceed without or in excess of jurisdiction or legal authority.



1 53. Plaintiff requests that this Court grant special action relief by prohibiting Defendant
2 from enforcing its policy in violation of state laws governing the rights of medical marijuana
3 cardholders.

4 **THIRD CAUSE OF ACTION - DECLARATORY RELIEF**

5 54. By reference hereto, Plaintiff hereby incorporates the preceding paragraphs.

6 55. An actual and justiciable controversy has arisen and now exists between Plaintiff and
7 Defendant concerning Defendant's medical marijuana policy and its "safety sensitive" construct
8 derived from A.R.S. § 23-493.06, and Plaintiff's rights.

9 56. Plaintiff desires, and is entitled to, a judicial declaration that to the extent that
10 Defendant attempts to rely upon the "safety sensitive" construct (A.R.S. §§ 23-493 & -493.06)
11 as justification for its policy and announced intentions towards Plaintiff for future exercise of his
12 rights under medical marijuana laws, those statutes and Defendant's policy are unconstitutional
13 according to the Voter Protection Act (Proposition 105).

14 57. A judicial declaration, as requested herein, is necessary and appropriate at this time
15 under the circumstances in order to, among other things, prevent further violation of Plaintiff's
16 rights.

17 58. This Court is authorized to issue such a declaration under A.R.S. §§ 12-831, *et seq.*

18 **FOURTH CAUSE OF ACTION - INJUNCTIVE RELIEF**

19 59. By reference hereto, Plaintiff hereby incorporates the preceding paragraphs.

20 60. Plaintiff seeks injunctive relief under A.R.S. §§ 12-1801, *et seq.*

21 61. Plaintiff has a strong likelihood of prevailing at trial on the merits.

22 62. Plaintiff has suffered and will continue to suffer irreparable injury if injunctive relief
23 is not granted.

24 63. Plaintiff has no adequate remedy at law for Defendant's violations

25 64. Balance of hardships tips in favor of Plaintiff whose rights are being violated, and
26 away from Defendant and Defendant's violations of state anti-discrimination law.

27 65. The public interest in employers adhering to state anti-discrimination laws and in
28 seeing unconstitutional legislation declared so is very high.



66. As a result, after notice and a hearing, which may be consolidated with trial on the merits, Plaintiff seeks an order enjoining Defendants from enforcing its policy of discrimination against medical marijuana cardholders based on unconstitutional legislation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment as follows:

- A. Declaring that Defendant's discriminatory acts, practices, and policies are in violation of state law;
- B. Declaring that A.R.S. §§ 23-493 and -493.06 are unconstitutional in light of the Voter Protection Act;
- C. After application, notice and a hearing, preliminarily and permanently enjoining Defendant from its discriminatory acts, practices, and policies taken in violation of state law;
- D. Directing Defendants to take such affirmative action as is necessary to ensure that the effects of these unlawful acts and policies are eliminated and do not affect Plaintiff's employment;
- E. Awarding Plaintiff the costs of this action, and reasonable attorneys' fees as provided by A.R.S. § 12-348, the common fund doctrine, and/or the private attorney general doctrine; and
- F. For such other and further relief as the Court deems just and proper.

Respectfully submitted on this 5th day of February, 2020,

JOSHUA CARDEN LAW FIRM, P.C.

By: Joshua W. Carden
Joshua W. Carden
Attorney for Plaintiff
Timothy Costello

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VERIFICATION

I, Timothy Costello, declare as follows:

1. I am the Plaintiff named in this Verified Complaint.

2. I have read the foregoing Verified Complaint and I know the contents thereof. The allegations contained in the Verified Complaint are true and accurate to the best of my personal knowledge, except those statements that are made on information and belief and, as to those, I believe them to be true and accurate.

3. Pursuant to Rule 80(i) of the Arizona Rules of Civil Procedure, I declare under the penalty of perjury that the foregoing is true and correct.

Dated: 2/5/20


TIMOTHY COSTELLO

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STATE OF ARIZONA

MARICOPA COUNTY SUPERIOR COURT

TIMOTHY COSTELLO, an individual

CV2020-051205

Plaintiff,

**CERTIFICATE OF COMPULSORY
ARBITRATION (NOT SUBJECT)**

vs.

MARICOPA COUNTY SPECIAL HEALTH
CARE DISTRICT, a body politic,

Defendant.

The undersigned certifies that he knows the dollar limits and any other limitations set forth by the local rules of practice for the applicable superior court, and further certifies that this case IS NOT subject to compulsory arbitration, as provided by Rules 72 through 76 of the Arizona Rules of Civil Procedure.

Respectfully submitted on this 5th day of February, 2020,

JOSHUA CARDEN LAW FIRM, P.C.

By: 

Joshua W. Carden

Attorneys for Plaintiff

Timothy Costello