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Ramsey County Civil, MN

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

Court File No.: _____

Paul Olson,

Plaintiff,

vs. **COMPLAINT AND JURY DEMAND**

Minnesota Department of Human Services,

Defendant.

Plaintiff Paul Olson, for his Complaint against Defendant, Department of Human Services ("DHS"), State of Minnesota, states and alleges as follows:

INTRODUCTION

1. Plaintiff Paul Olson is a 29-year veteran of the Minnesota Department of Human Services ("DHS"). He rose through the ranks of the Health Care Administration ("HCA") to high level positions in which he functioned as the primary policy and law expert on Minnesota's inpatient hospital and other payment systems. In those positions he supervised a sizeable staff and was responsible for spending billions of dollars in taxpayer money. In the last year, he has been relegated to a cubicle, with an ambiguous and subordinate job title, no direct reports and no clear responsibilities. What happened in between was that Olson refused to grant an illegal benefit to Fairview University Medical Center that would cost the state millions of dollars. He also engaged in other whistleblowing conduct that is protected by law. The retribution from HCA higher level

managers Scott Leitz, James Golden and Mark Hudson was clear and brutal—they granted the benefit to the hospital and stripped Olson of his position and professional dignity. The emotional toll was daunting, but Olson challenged what had happened. Although the hospital exemption was found to be illegal, the retaliation continues to this day. Olson brings this lawsuit under the Minnesota Whistleblower Act, which is intended to deter intimidation of employees who do the right thing, and he seeks remedies for the retaliation he has experienced.

PARTIES

2. Plaintiff is a resident of the County of Ramsey, State of Minnesota.

3. Defendant Minnesota Department of Human Services (DHS) is an agency of the State of Minnesota, and is responsible for the acts and omissions of DHS employees.

JURISDICTION AND VENUE

4. The jurisdiction of this Court is invoked as the violations occurred in the State of Minnesota and involve state law.

5. At all relevant times, Plaintiff and Defendant were "employee" and "employer," respectively, within the meaning of Minn. Stat. § 181.931.

6. The acts alleged in this Complaint fall within the subject matter of this Court as Plaintiff's claims arise under the Minnesota Whistleblower Act ("MWA"), Minn. Stat. § 181.932.

7. Venue is proper in this Court as Defendant has an office and principal place of business in the County of Ramsey and State of Minnesota where the alleged illegal acts occurred.

FACTUAL BACKGROUND

A. Background and Employment History

8. Plaintiff began his employment with Defendant DHS in October 1984 after completing an M.B.A. in Finance at the University of Wisconsin and a 5-year stint as a Senior Financial Analyst for the Minnesota Hospital/Nursing Home Association.

9. Olson initially worked as Senior Research Analyst in the Long Term Care Management Division, from October 1984 through June 1987. He supervised the Hospital Section for the Audit Division from June 1987 to January 1994.

10. From January 1994 to May 2012, Olson was the Director/Manager of Payment Policy and Rates Management in the Purchasing and Delivery Strategies Division of the DHS HCA ("Department of Human Services Health Care Administration"). In that capacity he directed the planning, development, analysis and administration of fee for service and managed care acute care payment policy under the Medicaid, general assistance medical care and MinnesotaCare Programs. In simple terms, these responsibilities involved determining and managing the rates that Minnesota would pay for care through the above programs – payments that annually amounted to about $3 billion, and about half of which were paid with federal Medicaid funds. Generally, Minnesota uses a prospective inpatient hospital payment system, meaning that a predetermined, fixed payment is made for an admission based on a diagnosis related group system.[1] The parameters for these rates are established by legislation and it was

[1] *See* http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16_146905

Plaintiff's responsibility, following these legislative mandates, to ensure that the proper rates were calculated and implemented.

11. During this lengthy portion of Plaintiff's career at DHS, his performance reviews, called EDI's (Employee Development Interview Form E: Overall Job Performance Rating & Development Plan) were positive, and the overall rating in each of the most recent EDI's was either "Outstanding" or "Above Expectations." Plaintiff received numerous commendations and achievement awards and he functioned as the primary policy and law expert on Minnesota's inpatient payment system, on which he has worked since 1987.

B. New Administration and Reorganization

12. Following the election of Mark Dayton, Lucinda Jesson became the Commissioner of the Department of Human Services; Scott Leitz was appointed the Assistant Commissioner of DHS HCA; and James Golden was named Deputy Assistant Commissioner to Leitz.

13. In 2011-2012, a reorganization of the DHS HCA occurred. The two rates areas, inpatient and other institutional services, managed by Plaintiff, and services, managed by Liz Backe, were combined into a single area called Rates Management and placed under a new division named Purchasing and Service Delivery ("PSD"). Plaintiff had held this position before under other administrations. Mark Hudson, hired in August 2011, was named Division Director of the new PSD. Hudson reported to Golden. Effective May 23, 2012, Plaintiff was officially appointed to the Rates Management position. Plaintiff reported to Hudson.

14. In the Rates Management position, as in his prior positions back to 1987, Plaintiff had "full authority" . . . to perform all of the duties and responsibilities to establish payment rates for inpatient hospitals under Minnesota Statutes." This authority was delegated to him regularly by the Commissioner of Human Services pursuant to Minn. Stat. § 15.06, subd. 6. The most recent delegation of authority to Plaintiff was effective on October 9, 2012 and has not been rescinded.

C. Legislation Reducing Payments for Inpatient Hospital Services

15. In its 2011 session, the Minnesota legislature amended Minn. Stat. § 256.969 at subd. 3c to implement a 10% reduction in payments by the State for inpatient hospital services under the Medical Assistance/Medicaid ("MA") program.

16. The legislation, however, exempts "children's hospitals" from the reduction, as well as long-term hospitals and payments under managed care:

> Facilities defined under subdivision 16, long-term hospitals as determined under the Medicare program, children's hospitals whose inpatients are predominantly under 18 years of age, and payments under managed care are excluded from this paragraph.

Minn. Stat. § 256.969, subd. 3c.(a).

17. Under Minn. Stat. § 256.9686, hospitals are defined by their licensure and the only "children's hospitals" that meet the definition in Minnesota are Minneapolis Children's, St. Paul Children's and Gillette Children's. These also are the only hospitals that meet the requirement in Minn. Stat. § 256.969, subd.3c(a) of having inpatients

predominantly under 18 years of age. The Fiscal Note[2] prepared for the legislation further indicated that these were the only children's hospitals eligible for the exemption.

18. Plaintiff was familiar with the 2011 legislation because he drafted it at Leitz's request as a cost-saving measure for the State. Plaintiff also was familiar with the definition of "children's hospital" as incorporating only Minneapolis Children's, St. Paul Children's and Gillette because, consistent with Minnesota statutes, that has been the operative definition at DHS HCA since 1989. The rationale for the limited definition and for giving children's hospitals special treatment is that they tend to have a high ratio of Medicaid patients and cannot compensate for their lower payments through payments from other patients. Children's hospitals also tend to provide specialty care not provided by other hospitals. For example, they typically do not provide birth services, even for younger mothers, or procedures such as appendectomies that are routinely available at other hospitals.

D. Plaintiff's Refusal to Grant an Illegal Rate Reduction Exemption to the Fairview University Medical Center

19. The 10% reduction in payments for inpatient hospital services under the MA program discussed above was effective beginning September 1, 2011 and lasts through June 30, 2015.

[2] "A fiscal note estimates the costs, savings, revenue gain, or revenue loss resulting from the implementation of proposed legislation. The baseline for the fiscal note is the most recent budget forecast so the fiscal note numbers show changes from that forecast. It is a tool to help legislators better understand how a bill might impact the state budget as a whole, individual agencies, and in some instances, local governments." http://www.beta.mmb.state.mn.us/doc/budget/notes/policy-manual.pdf

20. Starting in about November of 2011, Hudson began asking Plaintiff why the Amplatz children's unit within the Fairview University Medical Center ("FUMC") was not receiving the exemption to the 10% reduction. Hudson told Plaintiff that Leitz and Golden wanted the exemption given to FUMC. Plaintiff responded that doing so would be illegal and he would not and could not do it. He explained to Hudson that FUMC, like other hospitals that had children's units, did not fall within the definition of "children's hospital" in the statute and therefore was not included in the Fiscal Note for the legislation. He further told Hudson that, prior to the law going into effect in September of 2011, he and system's staff had set up the payment systems to provide the exemption to the proper hospitals and this could not be changed under the statute. Plaintiff suggested to Hudson that a legislative change could be proposed to provide the exemption because they were working on 2012 budget proposals at the time. Plaintiff was also contacted by the HCA's 2011 legislative budget director, Dave Greeman, and Plaintiff similarly explained the issue to him.

21. In January of 2012, Hudson again raised the question why FUMC was not receiving the rate reduction exemption for Amplatz admissions. Plaintiff responded as he had before. He told Hudson that FUMC could not have the exemption because it would be illegal. He again suggested that the exemption could be accomplished through a change in the law.

22. No statutory change was proposed to the Minnesota legislature in 2012, likely because legislators would have objected to giving exemptions to FUMC that were not

provided to other hospitals with similar children's units and because the exemption for Amplatz alone would have required a Fiscal Note showing a cost of over $11 million.

23. Hudson raised the FUMC issue with Plaintiff again in August 2012. Hudson told Plaintiff that Leitz and Golden wanted the exemption given to FUMC and did not understand why it hadn't been done yet. Hudson angrily told Plaintiff he wanted it done. Plaintiff again told Hudson that the proper children's hospitals had been exempted in the system and he would not make that change because it would be contrary to the statute. Plaintiff gave Hudson the statutory citations showing that FUMC Amplatz did not fall within the definition of children's hospitals. Again, Plaintiff said he could prepare a bill proposing the change.

24. After that communication, Plaintiff reported the situation to Ann Berg, the Deputy Medicaid Director, and told her that "someone is looking for a way to exempt Amplatz from the 10% ratable [reduction]." Berg warned Plaintiff to be careful as this was not a management group that you say "no" to.

25. Sometime prior to October 12, 2012, Leitz and Golden met with FUMC lobbyists and told them that FUMC would receive the rate reduction exemption retroactively and the exemption would be applied to any FUMC admission involving patients under age 18.

26. Because Plaintiff had refused to change FUMC's rates, Leitz, Golden and Hudson bypassed him entirely, went outside the proper organizational structure, and directed a non-rates staff member to write a system's order to implement the change in the payment system that would give FUMC increased (no 10% reduction) rates for all

admissions under age 18 in FUMC. It was not that staff member's job to make such changes in the inpatient systems. That staff member was further directed to provide FUMC with a retroactive gross adjustment to effectively repay "underpayments" retroactive to September 1, 2011.

27. The staff member, uncomfortable with the direction he was given, discussed the situation with Plaintiff, who told him that the change was against the law. Plaintiff confirmed this conclusion in an email that was copied to Deputy Medicaid Director Berg. The staff member nonetheless implemented the change in October 2012.

28. The result of this change was that FUMC got a special rate increase that was not given to other hospitals in Minnesota that have a similar children's unit, e.g. the Mayo Eugenio Litta Children's Hospital in Rochester and Duluth St. Mary's Children's Hospital. FUMC further got rate increases for ordinary services such as births and appendectomies that were beyond the services the legislation was intended to protect. In addition, using the below age 18 admission criteria meant that FUMC received the rate increase for all patients in that age group regardless of whether they were admitted to Amplatz. Finally, because FUMC's MA disproportionate share rate of about 27% is significantly lower than the children's hospitals that were the target of the rate reduction (65%-45% MA), the State was benefitting an institution that did not have the same need as the children's hospitals identified in the statute.

29. This change resulted in significant cost to the State's MA program. Just the retroactive adjustment of the payment amounted to $500,000, and, as stated above, a

Fiscal Note would have put the cost to the state and federal government (and benefit to FUMC) at more than $11 million.

E. Plaintiff's Implementation of Statutory Rebasing Requirement Is Withdrawn

30. On December 17, 2012, Plaintiff provided information to Hudson and other managers that the relative value rebasing of rates for inpatient hospitals had been completed as required by 2011 legislation, specifically Minn. Stat. § 256.969, subd. 2. His communication included documentation verifying the effect on each hospital, and that the math calculations were done correctly and legal requirements were followed. Plaintiff also noted that the rebased rates had been sent to the hospitals.

31. A few days later, Hudson sent a memo to hospitals participating in the MA program telling them that the rebasing had been withdrawn. As a result, individual hospitals were over- or under-paid based on current medical practice standards. That situation continues to the present because relative value rebasing has not yet been implemented.

32. After the withdrawal, Plaintiff had a meeting with Hudson where they talked about the information Plaintiff had provided. Plaintiff reminded Hudson that the rebasing was required by law and was mandated to be in effect as of January 1, 2013 and to be reported in the State Plan for purposes of federal Medicaid payments, which are 50%.

F. Plaintiff's Report of Illegal Failure to Get Prior Authorization for Rehabilitation Services

33. In January 2013, Plaintiff reported to Hudson that rehabilitation services (physical and occupational therapy, speech language pathology), which at that time were

under the purview of Julie Marquardt, Hudson's Deputy Division Director, were being provided without prior authorization in violation of Minn. Stat. § 2568B.0625, subd. 8. He further told Hudson that this failure had likely resulted in increased and questionable payments by the State due to lack of oversight.

G. Plaintiff's Refusal to Raise Rates for Behavioral Health Providers

34. In January 2013, Behavioral Health Providers ("BHP") asked for a raise in their bundled rate for mental health assessments and referral services.

35. Hudson asked Plaintiff to investigate the issue, which he did. Plaintiff learned and informed Hudson that there was no formal agreement with BHP and that a bundled rate of $252 had been operative since 2003. Plaintiff further communicated that the rate lacked any service level information to indicate what is being paid for, had not been incorporated in the State plan, and had not been offered to other mental health providers.

36. Hudson told Plaintiff to raise the rate anyway. In early February, Plaintiff said that he could not and would not do it. The reasons included that it would be illegal to give a raise to one provider that is not offered to others, and that the rate had no basis in law or the Medicaid State Plan, making it illegal to collect federal money for it.

H. "Reorganization" and Demotion to Silence Plaintiff

37. On February 12, 2013, Plaintiff was summoned to a meeting with four HCA managers, including Hudson, Golden, Marquardt, and Matt Woods, Chief Administrative Officer. They told him he was removed from his rates management position within PSD and that Liz Bakke would take over his job. They provided no explanation or rationale for the change.

38. Hudson, Golden, Marquardt and Woods further told Olson that his new position would be "Special Projects" but refused to answer any questions about organizational details for the position. Where Plaintiff had previously supervised a staff of 14-16 people, this position had no staff and no job description. There was no doubt in Plaintiff's mind that he had been demoted and that the reason was his refusal to violate Minnesota statutes. While his seniority and job history made it difficult for HCA managers to fire Plaintiff, he believed he had been marginalized in hopes that he would leave.

39. On February 21, 2013, Leitz and Golden announced an alleged "reorganization" that created a Chief Rates Officer position. Hudson was named to that position along with his Director position. The memo further announced that Liz Backe now had the rates management position, which had been performed by Plaintiff, and that Plaintiff would "transition to a new role as a comparative analysis manager for PSD."

40. On February 28, 2013, Plaintiff received a performance review (EDI) from Hudson and Golden, with the lowest possible rating: "less than satisfactory." Plaintiff had previously had no contact with Golden, who signed as the second level supervisor, and Golden had no knowledge of his work product. Hudson's explanation of the less than satisfactory rating was vague and incoherent. Reproduced just as it appears in the EDI, Hudson's explanation stated:

> We have recently shift Paul's role into a position that seems better aligned with he Interests and I believe he will be more satisfied. Overall he does not appear supportive of the new administrations efforts to communicate timely and ensure transparency. He really did not take initiative to do more min. in the rates role. He concentrated on to integrate rates work and does not have

good methods to provide staff oversight. He feels micro-managed and does not want to change much at a time of intense changes. His efforts have not been resource short. To the division forward we needed to shift his role.

I. Plaintiff's Continued Reports of Illegal and Retaliatory Conduct: Three Investigations

1) Appeal of Falsified EDI

41. On March 18, 2013, Plaintiff filed a formal administrative appeal of his EDI to Human Resources. He claimed the EDI was arbitrary and capricious for a number of reasons, including that no objective basis was provided for the rating; that he had been previously provided no input on the issues raised and no opportunity for input prior to the issuance of the EDI as required by Human Resources; and that the explanation provided no support for the rating.

42. In late May of 2013, Plaintiff met with Sean Tolefree, Human Resources Deputy Director, who had been assigned the investigation of his EDI appeal. Tolefree asked many questions about the questionable Medicaid payments involving FUMC. Plaintiff suggested that those issues could be addressed in greater detail after the EDI appeal was resolved.

43. On July 3, 2013, Plaintiff received a letter from Tolefree, stating that he had granted Plaintiff's appeal because no documentation existed of Hudson's claim that he had addressed performance issues with Plaintiff prior to the EDI. As a result, Plaintiff's initial EDI was modified. He received a revised EDI that corrected the time period for the evaluation and changed his rating to "Overall performance is good."

2) Audit of Illegal Conduct and Reports to State Officials

44. In the meantime, because the illegal payments to FUMC Amplatz were regularly occurring and because he had been unsuccessful in challenging them, Plaintiff reported the conduct as Medicaid fraud to appropriate federal authorities on June 27, 2013. He notified Commissioner Jesson that he had done so.

45. Apparently information that Plaintiff provided in the investigation of his EDI appeal and his communication with Jesson finally triggered executive concern. On July 8, 2013, Plaintiff met with Gary Johnson, Internal Audit Director, and Brigid Dowdal, Inspector General Chief Legal Counsel, regarding various HCA improprieties he had observed and challenged, including the illegal payments and rates given to Amplatz. At the meeting, Plaintiff provided detailed written information to Johnson and Dowdal, who conveyed to Plaintiff that they thought the issues raised were serious and warranted investigation.

46. Also, in late September, Plaintiff provided state executives with information about the Medicaid fraud involving the FUMC payments. These included Governor Dayton, Legislative Auditor James Nobles and Attorney General Lori Swanson.

47. On October 1, 2013, Johnson provided his audit report to DHS Commissioner Jesson. The report corroborated Plaintiff's reports of illegal activity, including that FUMC's Amplatz unit should not have been exempted from the 10% reduction rate.

48. Johnson's report, "Review of Alleged Improprieties in the Health Care Administration," was a public document. Its results, and the agreement to increase payments to Amplatz in particular, became the subject of television and other media news

reports and subsequent investigative reporting, including interviews of the governor and involved parties, and a call by at least one legislator for Leitz to step down.

49. On November 5, 2013, Leitz wrote a letter to FUMC stating that the rate exemption given to them for the Amplatz unit was wrong and that HCA was ending the exemption and would be seeking return of the overpayments that had been made.

3) Retaliation Complaint through EOAD

50. In the July 8, 2013 meeting about the audit, Plaintiff realized that Johnson's investigation would not directly address the retaliation Plaintiff had experienced for refusing to participate in illegal activity and making reports of conduct that he believed was contrary to law.

51. Accordingly, Plaintiff initiated complaint proceedings with the DHS Equal Opportunity and Access Division (EOAD), which reports, along with the Human Resources Director, to the Commissioner. On July 19, 2013, investigator John Hummel opened a formal investigation of Plaintiff's retaliation complaint.

52. Based on questions Hummel posed to Plaintiff in the course of his investigation, it became obvious that Hudson and Golden were using the investigation as a tool to malign Plaintiff's character and job skills. As a post hoc rationale for their retaliation, they fabricated work "problems" that are false.

53. On October 9, 2013, Plaintiff had a meeting with HR in which he was told that the retaliation investigation was closed. He also received a written Notice of Conclusion of Investigation of Complaint. HR provided Plaintiff with no information indicating any

outcomes from the investigation. He was told that any resulting disciplinary action would become public information when the disciplinary action becomes final.

54. That same night, the 10 p.m. television news reported on the continuing investigation of Leitz's granting of the rate reduction exemption to FUMC and its cost to the state and federal governments. Just two minutes after the segment ended, Plaintiff received an anonymous phone call from his work phone. Someone stated in a high muffled voice: "You're marked." Plaintiff reported the call to the state patrol office responsible for capitol security. Minimal investigation occurred and the caller has not been identified.

55. Five months later, Plaintiff asked HR whether any public information about the outcome of the retaliation investigation was available. The response was "no." In the meantime, Golden has been promoted from Deputy Assistant Commissioner to the position of Medicaid Director and Hudson continues to have the position of Chief Rates Officer.

J. Plaintiff's Experience of Ongoing Retaliation after His Demotion

56. On February 21, 2013, after his demotion on February 12, 2013, Plaintiff began reporting to Marquardt rather than Hudson.

57. On February 25, 2013, a meeting was held with Plaintiff's former rates staff to discuss the alleged "reorganization." Plaintiff was excluded from that meeting and his exclusion from all PSD, HCA and managerial meetings continues to the present.

58. On April 19, 2013, the Chief Administrative Officer, Matt Woods, moved Plaintiff from his office to a cubicle. Woods told him that he could not have an office

because he was not a supervisor any more. However, other managers who do not supervise employees are assigned offices rather than cubicles and at least one empty office was available at the time.

59. From February through December 2013 Plaintiff worked without an official description of his position, without articulated job responsibilities, and without any staff.

60. Although Plaintiff was told that he would be assigned special projects, only one substantial project was assigned—an analysis of the interactions between the Affordable Care Act and Minnesota payment policy along with variables that impact payment policy decisionmaking. He completed this project and submitted his work product to Marquardt on July 25, 2013. He received no feedback or response to the project. He performed other smaller tasks related to his previous job as requested and as he could complete without exposing himself to a claim that he was "meddling" in matters related to his prior position.

61. Finally, on December 2, 2013, Plaintiff received a retroactive Position Description (PD) from Julie Marquardt for a job titled Program Analysis and Development Manager. Among other things, the PD contained no specific area(s) of responsibility. The three "principle responsibilities" exclusively involved "assigned" tasks and many of those potential tasks appeared to duplicate responsibilities Plaintiff had performed in the job from which he was demoted. However, in his previous position Plaintiff had the influence to design the tasks in a manner that would promote the goals of HCA, the autonomy to manage those tasks, and staff to perform the operational work necessary to accomplish them. Now he was being asked to perform the entirety of those

tasks with no influence, no autonomy, and no support. It was clear to Plaintiff that this PD was designed both as a "make work" scheme and to set him up for failure.

62. Plaintiff sent a memo to Marquardt on December 6, 2013 in which he pointed out the organizational problems with the PD as written, how the PD projected tasks that would be impossible for him to perform adequately as a solo worker, and his belief that the PD was a continuation of the retaliation he had already experienced. Marquardt responded to two concerns: she noted that the PD would not be applied retroactively and assured him that he would retain the same job classification.

63. Plaintiff has had only one subsequent meeting with Marquardt about his job responsibilities. No PD was provided, and the discussion focused on potential responsibilities well below Plaintiff's level of expertise and experience that would ensure that Plaintiff would be limited to marginal participation in meaningful PSD work.

64. On December 23, 2013, Plaintiff received a retroactive EDI assigning him an average "satisfactory" rating with no substantiation, no opportunity for discussion, and no underlying PD as required by Human Resources. When Plaintiff requested the basis for the rating, he received only a series of emails involving himself and Marquardt, most of which had nothing to do with his current job or performance.

65. Nothing in Plaintiff's work situation changed after Plaintiff was successful with his EDI appeal; nothing changed after Johnson's audit report confirmed that Plaintiff was correct in refusing to exempt FUMC's Amplatz unit from payment reductions; nothing changed after the retaliation investigation was closed; and nothing changed after the telephone call telling Plaintiff that he was "marked." Although there is meaningful

work that needs to be done, Plaintiff continues to be relegated to a cubicle with an amorphous job title, unspecified responsibilities, and no support. He continues to be shunned and excluded from meaningful interactions related to the significant work of the HCA, although his desire to contribute is obvious and he has decades of experience and expertise to offer.

K. The Toll of the Retaliation on Plaintiff

66. Because of Plaintiff's refusal to engage in illegal conduct and his reports of illegal conduct, Plaintiff has been injured in numerous ways.

67. Plaintiff has been demoted to a meaningless job title and stripped of meaningful work, where he previously had a job in which he excelled and a staff to assist him in performing his work and serving the needs of HCA.

68. The retaliation has sabotaged Plaintiff's career generally and has deprived him of opportunities to advance to higher levels of management in DHS with opportunities for higher salaries upon promotion.

69. As a person who has worked as a dedicated and loyal public servant for decades, Plaintiff feels betrayed, disappointed, disillusioned and disturbed by these experiences, as well as fearful that his treatment will discourage other public employees from speaking out.

70. The retaliation has forced Plaintiff to work in an environment where he is humiliated, demeaned and shunned on a daily basis as a valueless outsider who is not allowed to participate in meetings and not allowed to use his extensive expertise for the good of the HCA.

71. The retaliation has caused emotional distress for the Plaintiff in numerous other ways; he experiences, for example, anxiety, fear, lack of confidence, erosion of his self-esteem, frustration, powerlessness, embarrassment, depression and despair.

72. Due to Defendant's conduct, Plaintiff has suffered and continues to suffer other manifestations of emotional distress including insomnia, night sweats, nightmares, stomach problems, irritability and headaches.

73. The retaliation has diminished Plaintiff's enjoyment of life on a daily basis because the effects of his taking a stand against illegal conduct permeate all aspects of his life including his relationships and his ability to participate and take pleasure in life outside of work.

74. Plaintiff has experienced all of the above as conduct that has been calculated to force him out of DHS entirely—to give him no choice but to resign—a choice that would significantly increase his insurance costs and significantly reduce his pension and Social Security payments.

COUNT I

VIOLATION OF THE MINNESOTA WHISTLEBLOWER ACT

Plaintiff re-alleges each and every paragraph of this Complaint.

75. The MWA prohibits an employer from retaliating against an employee because that employee refused an employer's order to perform an action, objectively believed to violate the law, where the employee informs the employer of the reason for the refusal, or because that employee, in good faith, reports a violation or suspected violation of the law

to an employer or to any governmental body or law enforcement official. Minn. Stat. § 181.932, Subd. 1.

76. Plaintiff engaged in protected conduct when he refused to apply an exemption from a statutory 10% payment reduction to admissions of patients at FUMC who were under 18 years old. Plaintiff had an objective basis in fact to believe that applying such an exemption violated Minn. Stat. § 256.969 at subd. 3c and informed the Defendant he would not apply it for that reason.

77. Plaintiff engaged in protected conduct when he refused to grant a raise in the bundled rate for mental health assessments and referral services paid to Behavioral Health Providers. Plaintiff had an objective basis in fact to believe that granting such a raise violated the law and informed the Defendant he would not do it for that reason.

78. Plaintiff engaged in protected conduct when he made good faith reports of illegal conduct to Defendant and to governmental bodies and law enforcement officials. These included:

a. Reports to his employer, federal authorities and the offices of the Governor, Legislative Auditor and Minnesota Attorney General, that the Health Care Administration was making illegal payments and engaging in Medicaid fraud by granting an exemption from a statutory 10% rate reduction to FUMC for admissions of patients under 18 years old; this was a report of conduct that violated Minn. Stat. § 256.969, subd. 3c.(a).

b. Reports to his employer that HCA was in violation of Minn. Stat. § 256.969, subd. 2, by failing to rebase hospital in-patient rates in 2013;

c. Reports to his employer that rehabilitation services were being illegally provided without prior authorization; this was a report of conduct that violated Minn. Stat. § 2568B.0625, subd. 8.

d. Reports to his employer that he had experienced retaliation for challenging illegal conduct on the part of HCA; this was a report of conduct that violated Minn. Stat. § 181.932, subd. 1.

e. Reports to his employer and to the state patrol office responsible for capitol security that he had received a threatening telephone call; this was a report of conduct that violated Minn. Stat. §§ 609.713 and 609.72.

79. Defendant's retaliatory conduct, constituting violations of the MWA, includes demoting him, subjecting him to a false negative EDI, falsely accusing him of deficient work performance, depriving him of career opportunities and meaningful work, and otherwise making his work conditions hostile and injurious to his physical and mental well-being as described above in ¶¶ 66-74.

80. The unlawful employment practices complained of above were intended to force Plaintiff to leave his position with Defendant.

81. The unlawful employment practices complained of above were intentional and were performed by Defendant with malice or with reckless indifference to the laws that protect the Plaintiff.

82. As a direct and proximate result of Defendant's illegal conduct, Plaintiff has suffered, and continues to suffer, emotional distress, humiliation, embarrassment, loss of

reputation, loss of enjoyment of life, and lost career opportunities, and has incurred attorneys' fees, costs and expenses and suffered other serious damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that judgment be entered against Defendant for the following:

a. That the practices of Defendant complained of herein be adjudged, decreed and declared to be in violation of the rights secured to Plaintiff under the Minnesota Whistleblower Act.

b. That Defendant be required to make Plaintiff whole for its adverse and unlawful actions;

c. That Plaintiff be reinstated to his former position or, in the alternative, be awarded the past and future monetary value of any employment losses he experienced as a result of Defendant's retaliation.

d. That Plaintiff be awarded compensatory damages in excess of fifty thousand dollars ($50,000.00), in an amount to be determined at trial.

e. That the Court award Plaintiff his attorneys' fees, costs and disbursements pursuant to Minn. Stat. § 181.935 and any other applicable laws or statutes.

f. That the Court grant such other and further relief as it deems fair and equitable.

g. Plaintiff gives notice that he intends to seek leave to amend this Complaint to pray for punitive damages pursuant to Minn. Stat. § 549.191.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS

Dated this 19th day of March, 2014.

HALUNEN & ASSOCIATES

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney's fees may be awarded pursuant to Minn. Stat. § 549.21 to the party against whom the allegations in this pleading are asserted.

Dated this 19th day of March, 2014.

HALUNEN & ASSOCIATES

Clayton D. Halunen