IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI SOUTHERN DIVISION

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) Case No.
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COMPLAINT

COMES NOW plaintiff Viran Roger Holden and for his causes of action against Defendants Mercy Clinic Springfield Communities, Alan Scarrow, Jill Dixon and Amber Ammerman alleges and states as follows:

Parties

- 1. Plaintiff Viran Roger Holden is a citizen of the United States of America and resident of Springfield, Greene County, State of Missouri.
- 2. Defendant Mercy Clinic Springfield Communities (hereinafter, "Mercy Clinic") is a nonprofit corporation incorporated under the laws of the State of Missouri and doing business under the name Mercy Clinic.
- 3. Defendants Alan Scarrow, Jill Dixon and Amber Ammerman reside in the judicial district of the United States District Court for the Western District of Missouri Southern Division.

Jurisdiction and Venue

- 4. Plaintiff's action seeks to remedy Defendants' wrongful conduct through the following claims for relief: violations of Federal Whistleblowers Protection Act contained in 31 U.S.C.A. § 3730(h), wrongful discharge of Plaintiff in violation of public policy and the laws of the State of Missouri, breach of contract and tortious interference with Plaintiff's business expectancy, all as more fully set forth below.
- 5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.A. § 1331, since these claims arise from violations of laws of the United States and related state common law. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C.A. § 1367.

Plaintiff's Employment With Defendant Mercy Clinic

- 6. Plaintiff Viran Roger Holden, M.D., PhD is a medical doctor licensed in the State of Missouri and board certified in medical oncology and hematology. Plaintiff was hired by St. John's Physicians and Clinics, Inc. as a medical oncologist in Springfield, Missouri in 2005. St. John's Physicians and Clinics, Inc. changed its name to St. John's Clinic. St. John's Clinic, Inc. changed its name to Mercy Clinic Springfield Communities. Plaintiff executed a Physician Employment Agreement prior to beginning his employment in 2005. A copy of that Agreement is attached as Exhibit A and is incorporated herein by reference.
- 7. On or about July 1, 2014, at Defendant Mercy Clinic's request, Plaintiff executed a new Physician Employment Agreement with Mercy Clinic Springfield Communities. A copy of that Agreement is attached as Exhibit B and is incorporated herein by reference.

Plaintiff's Disclosure of Potentially Illegal Conduct To (1) Defendant Mercy Clinic,

(2) Defendant Mercy Clinic's General Counsel, (3) Missouri Board of Registration for the Healing

Arts and (4) Department of Health and Human Services, Office of Inspector General

- 8. In 2010, Defendant Mercy Clinic hired Gregory Nanney as a medical oncologist. That same year, Defendant Mercy Clinic hired Steven Braun as a radiation oncologist. Prior to coming to Mercy Clinic, Drs. Nanney and Braun both practiced at the same clinic in Hutchinson, Kansas.
- 9. While Drs. Nanney and Braun were employed at Mercy Clinic, Plaintiff saw patients who were also patients of Drs. Nanney and Braun, many of whom were Medicare and Medicaid patients. Until in or about June 2012, Plaintiff was the Chair of the Mercy Clinic Oncology Department and, in that capacity, received information relating to patients of the Oncology Department including concerns and complaints of physicians and other healthcare providers. Based on seeing patients who were also patients of Drs. Nanney and Braun and receiving information from other healthcare providers, Plaintiff became concerned that Drs. Nanney and Braun were billing for medically unnecessary services and/or performing inappropriate treatment.
- 10. For example, Dr. Nanney frequently ordered labs on his patients weekly, even though Plaintiff believes the standard of care normally requires labs only every three to four weeks and there was no medical reason to order weekly labs. In addition, the labs that Dr. Nanney ordered were often unusual. For example, ordering tumor markers for cancers where the resulting information had no medical benefit.
- 11. Dr. Nanney also frequently ordered radiologic scans for his patients every three months, even though Plaintiff believes the standard of care normally requires such scans only once annually and there was no medical reason for such scans.
- 12. Dr. Braun routinely left his clinic prior to 4:00 p.m., while nurses and technicians continued to treat his patients until 6:00 p.m. or 7:00 p.m., such that he was not "immediately available" to his patients.
- 13. Dr. Braun also engaged in ordering three to four radiation therapy simulations for his patients, even though Plaintiff believes the standard of care only requires two radiation therapy simulations, with no medical reason for the additional radiation therapy simulations.

- 14. In one instance, Dr. Nanney prescribed Rituxan to a patient while Dr. Braun was simultaneously providing radiation therapy, even though Plaintiff believes there was no medical reason for concurrent radiation treatment.
- 15. In another instance, where the patient suffered from borderline intellectual functioning, Dr. Nanney prescribed additional rounds of chemotherapy over and above the standard of care while Dr. Braun simultaneously treated the patient with radiation therapy, even though Plaintiff believes there was no medical reason for either the additional rounds of chemotherapy or concurrent radiation treatment.
- 16. Plaintiff believed that the medically unnecessary treatments by Drs. Nanney and Braun often resulted in adverse side effects for the patients, including hospital admissions.
- 17. Plaintiff further believed Drs. Nanney and Braun were treating patients in a manner that would maximize reimbursement from Medicare and Medicaid, while disregarding well-established national cancer treatment guidelines.
- 18. Defendant Mercy Clinic was first made aware of many of Plaintiff's aforementioned concerns in or about August 2011, when Plaintiff met with his office manager, Amy Fore, regarding said concerns.
- 19. In or about January 2012, Plaintiff attended a meeting regarding Dr. Nanney. Also present were Amy Fore, Allen Allphin, (Chief of Staff of Mercy Hospital), Kevin Goodwin (Vice-President of Operations of Defendant Mercy Clinic), Stanley Hayes (Director of Medical Subspecialties of Defendant Mercy Clinic), Majula Raju, Lavany Tiriveedhi, Gary Hoos, and Alexander Hover. At the meeting, Plaintiff brought to the attention of all present several cases where he believed Dr. Nanney's treatment was inappropriate and/or needlessly endangered the patient. After the meeting, Defendant Mercy Clinic made a determination to send these cases for external review.
- 20. Following the external review process, Dr. Nanney was allowed to continue practicing within the Cancer and Hematology Clinic, but was subjected to a Performance Improvement Plan,

wherein he was required to become board certified in 2012 and also have his charts reviewed and approved by senior physicians.

- 21. Plaintiff was instructed by Mercy not to discuss his concerns about Drs. Nanney and Braun outside of the medical oncology group.
- 22. In May 2012, because of his concerns about the continuing practices of Drs. Nanney and Braun, Plaintiff approached and met with the General Legal Counsel for Mercy Hospital Springfield and/or Defendant Mercy Clinic, Michael Merrigan. At this meeting, Plaintiff voiced his concerns regarding what he believed to be Medicare and Medicaid fraud. Mr. Merrigan inquired as to whether Plaintiff believed that Dr. Nanney was overtreating patients to receive additional compensation and Plaintiff responded affirmatively.
- 23. In or about June 2012, after Plaintiff's meeting with Michael Merrigan, Dr. Nanney left his employment with Defendant Mercy Clinic.
- 24. In or about July 2012, Stanley Hayes, Plaintiff's physician supervisor, and Defendant Scarrow removed Plaintiff from his position as Chair of Medical Oncology. Plaintiff was advised that he was removed because he had approached Mercy's Legal Counsel, Michael Merrigan, with his complaints about Drs. Nanney and Braun.
- 25. Immediately following Plaintiff's removal from the position, Defendant Mercy Clinic appointed Gary Hoos as the Chair of Medical Oncology. Dr. Hoos had trained with Dr. Nanney and was the person who had recruited Dr. Nanney to come to Defendant Mercy Clinic.
- 26. On or about December 16, 2013, Plaintiff met with an investigator with the Missouri Board of Registration for the Healing Arts ("the Missouri Board") and provided information with respect to his aforementioned concerns about Drs. Nanney and Braun.

- 27. On or about March 27, 2014, Plaintiff met with agents from the United States Department of Health and Human Services, Office of the Inspector General ("the Federal Government") and provided information with respect to his aforementioned concerns about Drs. Nanney and Braun.
- 28. On January 9, 2015, Plaintiff was contacted by counsel for Mercy relating to giving deposition testimony in a wrongful termination lawsuit involving Dr. Hyewon Kim, a former radiation oncologist at Defendant Mercy Clinic (Greene County Case No. 1231-CV15794, the "Kim lawsuit").
- 29. On January 9, 2015, counsel for Plaintiff wrote to Mercy and advised of her representation of Plaintiff and also explained Plaintiff's concerns about retaliation relating to his testimony. *See* Exhibit C. That letter stated as follows:
 - Dr. Holden has communicated to me that your office has contacted him about giving his deposition in the above-referenced case. Dr. Holden hired us to personally represent him with respect to previous issues that he had with Mercy involving Drs. Nanney and Braun. He is concerned about retaliation by Mercy if he testifies truthfully in the Dr. Kim matter, especially given Mercy's previous demotion of him after he reported patient safety concerns about Drs. Nanney and Braun to Mercy administration.
- 30. Plaintiff appeared for his deposition on February 5, 2015 in the Kim lawsuit. Plaintiff testified consistently with the information he had previously provided during his interviews with the Missouri Board and the Federal Government. Plaintiff testified regarding his concerns of improper treatment by Drs. Nanney and Braun and Plaintiff's efforts to inform Defendant Mercy Clinic of his concerns. Defendant Alan Scarrow, the President of Defendant Mercy Clinic and Mercy Hospital Springfield, attended Plaintiff's deposition as the corporate representative of Mercy.

31. Counsel for Plaintiff wrote to Mercy on February 6, 2015. *See* Exhibit D. In that letter, Mercy was informed in writing of Plaintiff's cooperation with the Missouri Board and the Federal Government.

Defendant Mercy's Termination of Plaintiff

- 32. On March 19, 2015, just six weeks after giving his deposition testimony in the Kim lawsuit, Plaintiff was told that Greggory Ledger wanted to meet with Plaintiff at Mercy's administrative offices. Dr. Ledger is an endocrinologist at Mercy Clinic and is also the current director of medical subspecialties and in that capacity was Plaintiff's supervising physician. Prior to the meeting, Plaintiff called Dr. Ledger and asked what the meeting was about. Dr. Ledger advised Plaintiff that he could not say, only that it was a personnel matter.
- 33. Plaintiff appeared for the meeting with Dr.Ledger as requested. Also present were Linda Earnest, a Vice President of Defendant Mercy Clinic, and Renna Quasius with Human Resources at Defendant Mercy Clinic. Plaintiff was told that a former Mercy Hospital Springfield employee, Defendant Jill Dixon (a registered nurse), and a current employee of Defendant Mercy Clinic, Defendant Amber Ammerman (a registered nurse), had raised issues about Plaintiff.
- 34. During the meeting, Plaintiff was truthful and advised that he and defendant Jill Dixon had an affair beginning approximately six years ago while she was a Mercy Hospital Springfield employee. Plaintiff informed Dr. Ledger, Ms. Earnest and Ms. Quasius that the relationship had ended approximately three years ago. Plaintiff also truthfully reported that he had some flirtation with Defendant Ammerman, but that it had ceased approximately one year ago. Plaintiff indicated that within the past year, he had refused Defendant Ammerman's requests to have a relationship or sexual contact and attempted to limit his contact with her. Plaintiff further stated that since his flirtation had ceased, Defendant Ammerman had harassed and stalked Plaintiff and his family. Plaintiff also indicated that he had been in counseling for the same. During the meeting, Plaintiff was also questioned about two prescriptions for a Schedule 4

medication (written for the lowest dose possible with no refills) that he wrote approximately three years ago. Plaintiff indicated that the prescriptions were medically appropriate and that he wrote the prescriptions at the patients' requests because the patients indicated they were unable to get in and see their primary care physicians in a timely manner, but that he inadvertently failed to document the same in the patients' medical charts.

- 35. Defendant Mercy Clinic placed Plaintiff on administrative leave during the March 19, 2015 meeting and provided Plaintiff with a written memorandum to that effect. *See* Exhibit E.
- 36. On March 25, 2015, Defendant Scarrow advised Plaintiff in writing that his employment with Defendant Mercy Clinic would be terminated for "Cause." *See* Exhibit F. Plaintiff was given the option to sign a Confidential Separation Agreement and General Release by March 30, 2015, where he would receive three months' pay if he agreed not to sue Mercy or, alternatively, be terminated for "Cause" and be reported to the Missouri Board, National Practitioner Databank and United States Drug Enforcement Administration.
 - 37. Plaintiff refused to sign Mercy's Confidential Separation Agreement and General Release.
- 38. On April 1, 2015, Mercy Clinic's Regional General Legal Counsel, James Burke, advised Plaintiff that Mercy Clinic was appointing a "special five-member ad hoc committee to evaluate the charges and evidence against [him], and make a decision as to whether [his] employment contract, and [his] employment, should be terminated by Mercy Clinic for 'Cause.'" Mr. Burke indicated that "a determination will be made as to [his] continued employment on or before May 4, 2015."
- 39. Defendant Mercy Clinic did not advise Plaintiff how the "special five-member ad hoc committee" was selected or who was on said committee.
- 40. Plaintiff specifically requested that Defendant Mercy Clinic advise him regarding any further actions he could take to address and cure any alleged breach of the Physician's Employment Agreement. Defendant Mercy Clinic did not respond to Plaintiff's request.

- 41. On April 30, 2015, through its counsel, Mercy Clinic again requested that Plaintiff sign a Confidential Separation Agreement and Release. Plaintiff again refused and indicated that he wanted to return to his position at Mercy.
- 42. On May 4, 2015, the date that Mercy Clinic indicated a determination would be made regarding Plaintiff's continued employment, Mercy Clinic advised Plaintiff that "A determination has not yet been made as to your employment. Therefore, you will remain on paid leave pending a determination."
- 43. On May 15, 2015, Mercy Clinic advised Plaintiff that the Mercy Clinic Board of Directors was terminating Plaintiff's employment with Mercy "for cause," effective May 14, 2015. *See* Exhibit G.
- 44. Defendant Mercy Clinic's termination of Plaintiff is inconsistent with disciplinary actions taken against other persons with similar alleged violations and disproportionate to the level of offense.
- 45. Contrary to Defendant Mercy Clinic's assertion that the allegations against Plaintiff were "recently" brought to Defendant Mercy Clinic's attention, Defendant Mercy Clinic has been aware of the incidents that are the alleged basis for Plaintiff's termination for several years.
- 46. Defendant Mercy Clinic only chose to act on said allegations after learning of Plaintiff's cooperation with the Missouri Board and the Federal Government, and after he provided deposition testimony in the Kim lawsuit.
 - 47. Defendant Mercy Clinic's proffered reasons for Plaintiff's termination are pretextual.

Count I (against Defendant Mercy Clinic)

Violation of 31 U.S.C.A § 3730(h)

- 48. This is a civil action brought by Plaintiff Viran Roger Holden on his own behalf against Defendant Mercy Clinic for violations of 31 U.S.C.A. § 3730(h).
- 49. The acts of Defendant Mercy Clinic in retaliating against Plaintiff, including but not limited to the termination of his position as Chair of Medical Oncology and his wrongful discharge

because of his efforts to stop violations of 31 U.S.C.A. §3729 and of his cooperation with the Federal Government regarding its investigation into potentially fraudulent activity being committed by individuals at Defendant Mercy Clinic, violate the provisions of 31 U.S.C.A. § 3730(h) prohibiting discrimination by employers against employees who investigate and/or report violations.

- 50. The acts of Defendant Mercy Clinic, in retaliating against Plaintiff because of his efforts to stop violations of 31 U.S.C.A. §3729 and his cooperation with the Federal Government regarding investigation into potentially fraudulent activity being committed by individuals at Defendant Mercy Clinic, were outrageous because of Defendant Mercy Clinic's evil motive and/or reckless indifference to the rights of others.
- 51. As a direct and proximate result of the foregoing, Plaintiff has lost all benefits and privileges of employment. As a further direct and proximate result of Defendant Mercy Clinic's actions, Plaintiff has suffered and will continue to suffer emotional distress. Plaintiff is entitled to all relief necessary to make him whole.

WHEREFORE, Plaintiff Viran Roger Holden prays for judgment to be entered against Defendant Mercy Clinic on Count I as follows:

- a. Declaring the acts and practices complained of herein are in violation of the whistleblower protections contained in 31 U.S.C.A. §3730(h);
- b. Enjoining and permanently restraining the violations of the whistleblower protections contained in 31 U.S.C.A. §3730(h) as to Plaintiff Viran Roger Holden;
- c. Directing Defendant Mercy Clinic to place Plaintiff Viran Roger Holden in a position he would have held but for Defendant's discriminatory and retaliatory treatment of him, including reinstatement as an Oncologist and as the Chair of Medical Oncology at Defendant Mercy Clinic, and to make Plaintiff Viran Roger Holden whole for all earnings and benefits he would have received but for Defendant Mercy Clinic's discriminatory and

- retaliatory treatment, including but not limited to lost wages (two times the amount of back pay and interest on the back pay), benefits and all other relief afforded under the whistleblower protections contained in 31 U.S.C.A §3730(h);
- d. For general compensatory damages, including emotional distress damages, in an amount to be proven at trial;
- e. For special compensatory damages, including but not limited to actual and anticipated wage loss and employment benefits, in an amount to be proven at trial;
- f. For punitive damages in an amount sufficient to punish Defendant Mercy Clinic and to deter Defendant Mercy Clinic and others from like conduct; and
- g. For the cost of this action, reasonable attorneys' fees and expenses.

Count II (against Defendant Mercy Clinic)

Wrongful Discharge in Violation of Public Policy

- 52. The acts of Defendant Mercy Clinic, in terminating Plaintiff because of his cooperation with the Missouri Board and the Federal Government regarding investigation into potentially fraudulent activity being committed by individuals at Defendant Mercy Clinic, constitute wrongful discharge under the laws of the State of Missouri. Public policy prohibits discrimination by employers against employees who investigate and/or report violations.
- 53. In addition, the acts of Defendant Mercy Clinic in terminating Plaintiff, because he provided truthful testimony that was harmful to Defendant Mercy Clinic during his deposition in the Kim lawsuit, constitute wrongful discharge under the laws of the State of Missouri. "[I]t is well-settled that public policy requires that witnesses at trials shall not be restrained by the fear of being vexed by reprisals from those who are dissatisfied with their testimony...[a]s a result, the testimony of witnesses at trials is privileged in order to promote the most thorough investigation in courts of justice." *Drury v. Missouri Youth Soccer Ass'n Inc.*, 259 S.W.3d 558, 567 (Mo. App. E.D. 2008).

- 54. As a direct and proximate result of the foregoing, Plaintiff has lost all benefits and privileges of employment. As a further direct and proximate result of Defendant Mercy Clinic's actions, Plaintiff has suffered and will continue to suffer emotional distress.
- 55. The acts of Defendant Mercy Clinic, in retaliating against Plaintiff because of his cooperation with the Missouri Board and the Federal Government regarding investigation into potentially fraudulent activity being committed by individuals at Defendant Mercy Clinic and/or for providing truthful testimony that was harmful to Defendant Mercy Clinic at his deposition in the Kim lawsuit, were outrageous because of Defendant Mercy Clinic's evil motive and/or reckless indifference to the rights of others.

WHEREFORE, Plaintiff Viran Roger Holden prays for judgment to be entered against Defendant Mercy Clinic on Count II as follows:

- a. For general compensatory damages, including emotional distress damages, in an amount to be proven at trial;
- b. For special compensatory damages, including but not limited to actual and anticipated wage loss and employment benefits, in an amount to be proven at trial;
- c. For punitive damages in an amount sufficient to punish Defendant Mercy Clinic and to deter
 Defendant Mercy Clinic and others from like conduct; and
- d. For the cost of this action.

Count III (against Defendant Mercy Clinic)

Breach Of Contract

56. Section 5.01(a) of the July 1, 2014 Physician Employment Agreement (the "Agreement") between Plaintiff and Defendant Mercy Clinic states that Defendant Mercy Clinic can only terminate the Agreement for "Cause" in certain events.

- 57. None of the events set forth in Section 5.01(a) apply to Defendant Mercy Clinic's alleged basis for Plaintiff's termination.
- 58. In addition, the events that provide the alleged basis for Defendant Mercy Clinic's termination of Plaintiff occurred prior to the execution of the Agreement on July 1, 2014.
- 59. Defendant Mercy Clinic improperly classified Plaintiff's termination as a for "Cause" termination contrary to the terms of the July 1, 2014 Physician Employment Agreement. Said classification is also contrary to the terms of the 2005 Employment Agreement.
- 60. Section 5.02 of the Agreement requires that Defendant Mercy Clinic provide 90 days prior written notice to Plaintiff of its termination of the Agreement "Without Cause."
- 61. Defendant Mercy Clinic failed to provide 90 days prior written notice to Plaintiff of its termination of the Agreement.
- 62. In addition, Defendant Mercy Clinic notified Plaintiff of its intent to enforce Section 6.02 of the Agreement regarding Restrictive Covenants even though said section "shall not apply...if Mercy terminates [the] Agreement for any reason other than Cause pursuant to Section 5.01(a)."
- 63. Defendant's Mercy Clinic's actions set forth in paragraphs 54 through 60 constitute a breach by Defendant Mercy Clinic of the July 1, 2014 Physician Employment Agreement.

WHEREFORE, Plaintiff Viran Roger Holden prays for judgment to be entered against Defendant Mercy Clinic on Count III as follows:

- a. For compensatory damages in an amount to be proven at trial; and
- b. The cost of this action.

Count IV (against Defendants Scarrow, Dixon and Ammerman)

Tortious Interference with Employment

64. Plaintiff had an employment relationship with Defendant Mercy Clinic and had an expectancy of continued employment.

- 65. Defendants Scarrow, Dixon and Ammerman knew of Plaintiff's employment relationship with Defendant Mercy Clinic.
- 66. A breach was induced between Plaintiff and Defendant Mercy Clinic as a result of Defendants Scarrow's, Dixon's and Ammerman's intentional interference, individually and jointly; said breach resulted in termination of Plaintiff's employment.
 - 67. The intentional conduct of Defendants Scarrow, Dixon and Ammerman was not justified.
- 68. On information and belief, Defendants Dixon and Ammerman made allegations to Mercy Clinic against Plaintiff that were untrue in an effort to cause Plaintiff's termination even though neither had a legitimate justification for doing so.
- 69. On information and belief, Defendant Scarrow, and perhaps other administrators whose identities are unknown, made the decision to terminate Plaintiff's employment with Defendant Mercy Clinic and employed improper means to do so. Further, Defendant Scarrow was aware of Plaintiff's conduct in the Kim lawsuit and his cooperation with the Missouri Board and the Federal Government prior to terminating Plaintiff.
- 70. As a result of Defendants Scarrow's, Dixon's and Ammerman's intentional conduct, Plaintiff has been damaged.
- 71. The acts of Defendants Scarrow, Dixon and Ammerman, in intentionally inducing termination of Plaintiff's employment with Defendant Mercy Clinic without justification, were outrageous because of the evil motive of Defendants Scarrow, Dixon and Ammerman and/or their reckless indifference to the rights of others.

WHEREFORE, Plaintiff Viran Roger Holden prays for judgment to be entered against Defendants Scarrow, Dixon and Ammerman, on Count IV as follows:

a. For general compensatory damages, including emotional distress damages, in an amount to be proven at trial;

- b. For special compensatory damages, including but not limited to actual and anticipated wage loss and employment benefits, in an amount to be proven at trial;
- For punitive damages in an amount sufficient to punish Defendants Scarrow,
 Dixon and Ammerman and to deter Defendants Scarrow, Dixon and Ammerman and others from like conduct; and
- d. The cost of this action.

Request for Jury Trial

Plaintiffs request a jury trial on all counts.

Respectfully Submitted,

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