

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF CALHOUN
37TH JUDICIAL CIRCUIT

JOSEPH CASIAS

Plaintiff

vs.

WAL-MART STORES, INC.; and
TROY ESTILL,

Defendants.

Case No.: 2010- 2067 -CZ

Hon. ~~CONRAD J. SINDT~~

DANIEL W. GROW, PLLC
Daniel W. Grow (P48628)
515 Ship St., Suite 208
St. Joseph, MI 49085
(296) 519-8222

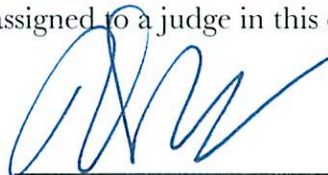
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
Scott Michelman*
1101 Pacific Ave., Suite 333
Santa Cruz, CA 95060
(831) 471-9000

* *pro hac vice motion pending*

AMERICAN CIVIL LIBERTIES
UNION FUND OF MICHIGAN
Daniel S. Korobkin (P72842)
Michael J. Steinberg (P43085)
Kary L. Moss (P49759)
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6800

COMPLAINT AND JURY DEMAND

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this court.



Daniel W. Grow

Plaintiff complains of Defendants as follows:

INTRODUCTION

1. Joseph Casias, a 30-year-old resident of Battle Creek, Michigan, has been living with sinus cancer and an inoperable brain tumor for over a decade. Joseph's condition has required extensive treatment and chemotherapy, interferes with his ability to speak, and is a source of severe and daily pain.
2. Joseph has refused to let his cancer prevent him from living his life. He is married, has two young children, and for five years held a job at the Wal-Mart in Battle Creek – where he began as an entry-level grocery-stocker in 2004 and progressed to an inventory control manager whom Wal-Mart recognized as Associate of the Year in 2008.
3. Throughout his successful career at Wal-Mart, Joseph had to cope with pain in his head and neck twenty-four hours a day. The pain relief medicine prescribed by Joseph's oncologist helped Joseph a little, but Joseph continued to experience constant pain as well as nausea, a side effect of the medication.
4. After the people of Michigan enacted the Michigan Medical Marihuana Act ("MMMA") by voter initiative in 2008, Joseph's oncologist recommended that he try marihuana as permitted by state law. Joseph obtained the appropriate registry card from the state. The results were immediate and profound: Joseph's pain decreased dramatically, the new medicine did not induce nausea, and Joseph was able to gain back some of the weight he had lost during his treatment.
5. But Joseph's relief, after more than a decade of suffering, was short-lived. Though Joseph complied with all applicable state laws and never smoked marihuana at work or came to work under its influence, Wal-Mart fired him upon discovering that he was a medical marihuana patient.

6. Joseph now seeks relief under the common law tort of wrongful discharge in violation of public policy and the MMMA.

7. In 2008, when the people of Michigan voted overwhelmingly to join the twelve other states that had decriminalized the limited use of marihuana as medicine for serious medical conditions, the voters recognized that “[m]odern medical research, including as found by the National Academy of Sciences’ Institute of Medicine in a March 1999 report, has discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions.” Joseph is an example of a patient for whom marihuana has had a life-changing positive effect. And yet Joseph’s employer, because it does not approve of the lawful medical treatment that relieves his pain, made him pay a stiff and unfair price for his medicine.

8. No patient should be forced to choose between adequate pain relief and gainful employment. No employer should be allowed to intrude on private choices made by employees in consultation with their personal physicians. And no corporation doing business in Michigan should be permitted to flout state laws protecting patients who use medical marihuana in accordance with state law. It is to vindicate these basic principles of human dignity and decency that Joseph seeks relief in this Court.

PARTIES, JURISDICTION, AND VENUE

9. Plaintiff Joseph Casias is a resident of Battle Creek, Calhoun County, Michigan. He is a former employee at the Wal-Mart store in Battle Creek.

10. Defendant Wal-Mart Stores, Inc., is a for-profit corporation that operates a national and international chain of retail stores. According to its website, Wal-Mart operates more than 8,000 stores in 15 countries including the United States; the chain employs more than

2.1 million people worldwide and its most recent year's sales totaled over \$405 billion. Upon information and belief, Wal-Mart is the largest private employer in the United States. Wal-Mart's headquarters are in Bentonville, Arkansas. At all times relevant to this action, Wal-Mart operated a retail store located at 6020 B Drive North in the City of Battle Creek.

11. Defendant Troy Estill is the manager of the Battle Creek Wal-Mart store, where Joseph worked for approximately five years. Upon information and belief, Defendant Troy Estill is a resident of Calhoun County, Michigan.

12. This court has jurisdiction over this matter because the amount in controversy exceeds \$25,000, exclusive of costs, interest, and attorney fees.

13. Venue is proper because all or a part of the causes of action asserted arose in Calhoun County, Michigan.

FACTUAL ALLEGATIONS

A. Joseph's Condition and Work History

14. Plaintiff Joseph Casias is 30 years old. Since he was 14 years old, Joseph has lived in Battle Creek, Michigan, where he met his wife, Angela. Joseph and Angela have been married for over ten years and have two young children.

15. At age 17, Joseph was diagnosed with sinus cancer and a brain tumor. His brain tumor is located at the back of his head near his spinal column. When diagnosed, it was the size of a softball.

16. Joseph's cancer is inoperable. He underwent extensive radiation and chemotherapy immediately after he was diagnosed, and his treatments kept him in the hospital for a year and in a nursing home for six months. As a result of his treatment, he lost all his teeth and now wears false teeth.

17. He suffered, and continues to suffer, severe pain in his face, head, and neck.

18. He used to play football and weigh 210 pounds, but over the course of his treatment he lost over 50 pounds and became too weak to walk.

19. Nonetheless, Joseph persevered in rehabilitation and was eventually able to leave the nursing home.

20. After he left the nursing home, and despite being in constant pain, Joseph went out and found a job. His first job was at Burger King.

21. Soon after that he found a new job at a local grocery store, where he worked the overnight shift for five years.

22. In November 2004, Joseph began working at the Battle Creek Wal-Mart. His first job there was to stock groceries on the overnight shift. When he was hired, he was given a drug test, which he passed.

23. After three and a half years, Joseph was promoted to inventory control manager.

24. Joseph's cancer has been in remission for about nine years, and he continues to see his oncologist every six months for a check-up. These doctor's visits cost about \$5,000 each and are billed out-of-pocket. Joseph's oncologist is Dr. Stephen L. Smiley at Southwest Oncology in Battle Creek; Dr. Smiley has treated Joseph since 1998.

25. Joseph experiences pain in his head and neck twenty-four hours per day. He describes his pain, when it is untreated, as a 10 on the scale of 10. Dr. Smiley prescribed Lorcet, a narcotic-based pain reliever, for Joseph, but this medication only lowers his pain to an 8 or 9 out of 10 and it has a side effect of nausea.

26. Though Joseph continued to suffer constant pain, his work performance at Wal-Mart has been exemplary. He was named Associate of the Year in 2008, an award given to only two employees out of 400 in the store.

B. The Michigan Medical Marihuana Act

27. In 2008, the people of Michigan enacted the Michigan Medical Marihuana Act (“MMMA”) by voter initiative. *See* MCL 333.26421 *et seq.* The measure passed with approximately 63% of the vote.

28. In the MMMA, the voters found that “[m]odern medical research, including as found by the National Academy of Sciences’ Institute of Medicine in a March 1999 report, has discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions.”

29. The first two stated purposes of the MMMA were “to allow under state law the medical use of marihuana” and “to provide protections for the medical use of marihuana.”

30. The MMMA decriminalized the use of marihuana as medicine when recommended by a physician for “debilitating medical conditions” such as Joseph’s. Specifically, the MMMA protects patients registered with the State of Michigan from “arrest, prosecution, or penalty in any manner” for the use of marihuana as medicine in accordance with the Act. A physician’s recommendation relating to a qualifying condition is required to obtain a registry card.

31. The new law also protects employees from being disciplined for their use of medical marihuana in accordance with the MMMA.

32. While the MMMA protects employees from disciplinary action, the MMMA also imposes express limitations for the use of medical marihuana. The MMMA specifically

states that employers are not required to accommodate the ingestion of marihuana in the workplace, and that the protections of the MMMA do not extend to employees who are working under the influence of marihuana.

C. Joseph Finds Relief in Medical Marihuana and Wal-Mart Fires Him for It

33. Several months after passage of the MMMA, Joseph and his oncologist Dr. Smiley discussed medical marihuana, and with Dr. Smiley's recommendation, Joseph applied for a state registry card. The Michigan Department of Community Health issued Joseph a registry card on June 15, 2009.

34. Joseph found medical marihuana very helpful for his condition. It dramatically reduced his level of pain to a 3 or 4 on a scale of 10 – far better than the Lorcet he had been prescribed previously. It also relieved the Lorcet's side effect of nausea, and because of his restored appetite Joseph has finally gained back some of the weight he lost during his treatment.

35. Joseph complied with all the requirements and provisions of the MMMA. In accordance with state law, Joseph at no time ingested marihuana in the workplace, and never performed duties of any kind for Wal-Mart while under the influence of marihuana. Joseph made do with his other prescription painkillers throughout the workday and used the marihuana once daily when he got home from work.

36. In November 2009 Joseph twisted his knee at work. He was not under the influence of marihuana at the time of his injury; Joseph simply stepped the wrong way on his knee while pushing a cart. He could barely walk when he came to work the next day, so he was driven to the emergency room by the manager for treatment.

37. Wal-Mart has a policy requiring drug tests for all employees injured at work. When Joseph was drug tested, he showed the testing staff his registry card indicating that he was a qualifying medical marihuana patient under Michigan law. His urine was then tested for drugs.

38. The method used to test for marihuana in urine is to screen for certain metabolites that stay in the urine for days or weeks. Therefore a urinary drug test cannot indicate whether the subject is currently under the influence of marihuana, only whether the subject has used it within the previous several days or weeks.

39. Joseph was released from the emergency room with a pair of crutches and instructions not to bear weight for a few days. Joseph recovered from his injury and returned to work a few days later.

40. Approximately one week after his injury, Joseph was informed that he had tested positive for marihuana. Joseph then went to speak with his shift manager, explained the positive drug test, and showed him his registry card indicating that he was a qualifying medical marihuana patient under Michigan law. Joseph also explained that he never smoked marihuana at work or arrived at work under its influence, and that he was not under the influence when he was injured. Rather, the positive drug test revealed only what Joseph readily admitted: that he had ingested marihuana within the days before the test, during non-work hours, to treat his painful medical condition. The shift manager made a photocopy of Joseph's registry card and told Joseph not to worry because he was not in trouble.

41. However, the next week, Joseph returned to work and was called into the office of store manager Troy Estill. Mr. Estill told Joseph that he was being fired because he failed a

drug test. Mr. Estill acknowledged that Joseph had a medical marihuana card, but he said that Wal-Mart does not honor it.

42. Defendants fired Joseph willfully in reckless disregard for his rights as a patient under the MMMA.

43. Joseph is now receiving unemployment benefits. He has tried to find other work, but times are tough in Battle Creek and throughout Michigan, and Joseph's job search has been unsuccessful so far.

44. As a direct and proximate result of Defendants' unlawful actions against Joseph as described, Joseph has suffered injuries and damages, including, but not limited to, loss of earnings and earning capacity; loss of career opportunities; loss of insurance benefits; the loss of the ability to support his family; loss of reputation and esteem in the community; mental and emotional distress including feelings of humiliation, outrage and indignity; physical manifestations of his emotional distress; and loss of the ordinary pleasures of life.

COUNT I:
WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY
MICHIGAN COMMON LAW

45. The foregoing paragraphs are incorporated by reference as if restated here.

46. The MMMA protects "[a] qualifying patient who has been issued and possesses a registry identification card" from, among other things, "disciplinary action by a business . . . for the medical use of marihuana in accordance with this act"

47. Joseph was at all relevant times "[a] qualifying patient who has been issued and possesses a registry identification card" as defined in the MMMA.

48. In violation of the MMMA, Defendants fired Joseph "for the medical use of marihuana in accordance with" the MMMA.

49. Joseph’s discharge therefore violated the public policy of the State of Michigan, as expressed in the MMMA through its direct protection of employees from discharge for the use of medical marihuana in accordance with state law.

50. As a direct result of Defendants’ unlawful firing of Joseph, he has suffered and will continue to suffer all the injuries and damages as alleged above.

COUNT II:
VIOLATION OF THE MICHIGAN MEDICAL MARIHUANA ACT
MCL 333.26424

51. The foregoing paragraphs are incorporated by reference as if restated here.

52. The MMMA protects “[a] qualifying patient who has been issued and possesses a registry identification card” from, among other things, “disciplinary action by a business . . . for the medical use of marihuana in accordance with this act”

53. Joseph was at all relevant times “[a] qualifying patient who has been issued and possesses a registry identification card” as defined in the MMMA.

54. In violation of the MMMA, Defendants fired Joseph “for the medical use of marihuana in accordance with” the MMMA.

55. In furtherance of the MMMA’s goals not only “to allow under state law the medical use of marihuana” but also “to provide protections for the medical use of marihuana,” the MMMA provides an implied remedy for Joseph’s discharge.

56. As a direct result of Defendants’ unlawful firing of Joseph, he has suffered and will continue to suffer all the injuries and damages as alleged above.

RELIEF REQUESTED

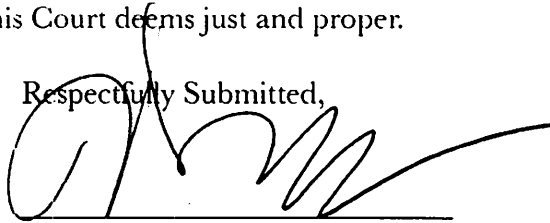
WHEREFORE, Plaintiff Joseph Casias respectfully requests that this Court:

- (a) Declare his discharge to be unlawful under Michigan law;

- (b) Award compensatory damages against Defendants, including but not limited to back pay, and compensation for emotional and mental distress;
- (c) Award exemplary damages against Defendants;
- (d) Award equitable relief in the form of reinstatement, or in the alternative award additional compensatory damages including front pay; and
- (e) Grant any other relief this Court deems just and proper.

Dated: June 29, 2010

Respectfully Submitted,



Daniel W. Grow (P48628)
DANIEL W. GROW, PLLC
515 Ship St., Suite 208, St. Joseph, MI 49085
(T) 296-519-8222, (F) 888-977-6310
dwg@danielwgrowpllc.com

Scott Michelman (pro hac vice motion pending)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
1101 Pacific Avenue, Suite 333, Santa Cruz, CA 95060
(T) 831 471-9000, (F) 831-471-9676
smichelman@aclu.org

Daniel S. Korobkin (P72842)
Michael J. Steinberg (P43085)
Kary L. Moss (P49759)
AMERICAN CIVIL LIBERTIES UNION FUND OF MICHIGAN
2966 Woodward Ave., Detroit, MI 48201
(T) 313) 578-6800, (F) 313-578-6811
dkorobkin@aclumich.org
msteinberg@aclumich.org

VERIFICATION

The undersigned, having read this COMPLAINT, attests that the facts are stated based on my own knowledge are true, and those matters stated of which I have been informed I believe to be true after reasonable inquiry.

Dated: June 29, 2010



JOSEPH CASIAS

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF CALHOUN
37TH JUDICIAL CIRCUIT

JOSEPH CASIAS

Plaintiff

Case No.: 2010-

-CZ

vs.

Hon. _____

WAL-MART STORES, INC.; and
TROY ESTILL,

Defendants.

DANIEL W. GROW, PLLC
Daniel W. Grow (P48628)
515 Ship St., Suite 208
St. Joseph, MI 49085
(296) 519-8222

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
Scott Michelman*
1101 Pacific Ave., Suite 333
Santa Cruz, CA 95060
(831) 471-9000

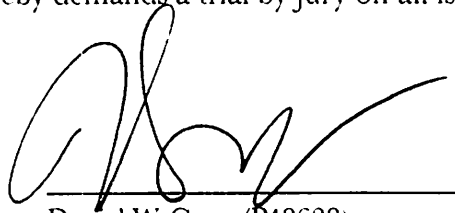
AMERICAN CIVIL LIBERTIES
UNION FUND OF MICHIGAN
Daniel S. Korobkin (P72842)
Michael J. Steinberg (P43085)
Kary L. Moss (P49759)
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6800

* *pro hac vice motion pending*

JURY DEMAND

Plaintiff Joseph Casias hereby demands a trial by jury on all issues in this action.

Dated: June 29, 2010



Daniel W. Grow (P48628)
DANIEL W. GROW, PLLC
515 Ship St., Suite 208, St. Joseph, MI 49085
(T) 296-519-8222, (F) 888-977-6310
dwg@danielwgrowpllc.com