

COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ROBERT CASCALENDA

Date Filed:
Index No.:

SUMMONS

Plaintiff,

-against-

CITY OF NEW YORK

Plaintiff designates
New York County for
trial based on
Defendant's Principle
Place of Business

Defendant'.
-----X

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your Answer, or if the complaint is not served with the summons, to serve a notice of appearance on Plaintiff's attorney within twenty (20) days after service of this summons, exclusive of the day of service, (or within thirty (30) days after service is complete, if this summons is not personally delivered to you within the State of New York); and in case of your failure to answer, judgment will be taken against you by default for the relief demanded hereto.

Dated: New York, New York
September 23, 2020

/s/
John Scola
Law Office of John A. Scola, PLLC
Attorneys for Plaintiffs
30 Broad Street, Suite 1424
New York, New York 10004
(917) 423-1445

DEFENDANT ADDRESS:

City of New York
100 Church Street
New York, New York 10007

COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ROBERT CASCALENDA

Index No.:

**VERIFIED
COMPLAINT**

Plaintiff,

-against-

JURY DEMAND

CITY OF NEW YORK

Defendant'

-----X
The Plaintiff, ROBERT CASCALENDA by his attorneys THE LAW OFFICE OF JOHN A. SCOLA, PLLC., as and for his complaint against defendant CITY OF NEW YORK (collectively referred to as "Defendant" and/or "CITY") for disability discrimination, hostile work environment, constructive discharge, and retaliation pursuant to New York State Executive § 296, and New York City Local Law §187 et al., New York Public Health Law as well as multiple negligence claims against the Defendant, City of New York and for injunctive relief Ordering that the New York City Police Department, cease their facially discriminatory policies and allow police officers who are lawfully prescribed medical marijuana to use marijuana as prescribed.

INTRODUCTION

This is a civil rights action on behalf of Plaintiff ROBERT CASCALENDA (hereinafter referred to as "Plaintiff") to vindicate his rights related to the disability discrimination, retaliation, hostile work environment and ultimate constructive discharge from Defendant CITY OF NEW YORK. More specifically Plaintiff seeks compensatory, emotional distress and punitive damages against the Defendant as well as attorney's fees related to the deprivation of Plaintiff's rights

secured by New York State Executive § 296, New York City Local Law §8-107 et al. and New York Public Health Law §3369 Plaintiff further seeks injunctive relief mandating An injunction mandating that the New York City Police Department and CITY OF NEW YORK comply with the Compassionate Care Act and thus allow New York City Police Officers who are lawfully prescribed medical marijuana to use their medication without any discriminatory or retaliatory actions from the CITY OF NEW YORK nor the NEW YORK CITY POLICE DEPARTMENT. Plaintiff was denied employment on the basis of his disability, forced to work in a hostile work environment, constructively discharged and retaliated against for lawfully protected complaints of said discrimination.

PROCEDURAL REQUIREMENTS

1. Plaintiff has filed suit with this Court within the applicable statute of limitations period.
2. Plaintiff filed a Notice of Claim with the Defendant City of New York on February 4 , 2020.
3. Defendant failed to request a 50h examination in this matter.

JURISDICTION AND VENUE

4. The Court has personal jurisdiction over Defendant pursuant to Civil Practice Law and Rules (“CPLR”) § 301 because Defendant CITY is a duly organized and existing under the laws of the State of New York exercising governmental authority
5. Venue is proper pursuant to CPLR § 503 because Defendant, CITY, Principle Place of BUSINESS is in New York County.

PARTIES

6. Plaintiff ROBERT CASCALENDA is a Male hired by the Defendant City of New York in January 2008 as a police officer. He retired on September 17, 2020.
7. Defendant City of New York ("NYC" or "City") is and was at all times relevant hereto

a municipal corporation duly organized and existing under the laws of the State of New York exercising governmental authority, Defendant is an employer subject to the New York State Human Rights Law and New York City Local Law. Defendant City of New York was or is the employer of Plaintiff and others referenced herein. The Police Defendant Department of the City of New York (hereinafter "NYPD" or "Department"), was and is a department, agency, bureau and/or subdivision of the Defendant City. The NYPD is and was at all times relevant hereto, a local government agency of New York City and was or is the employer of all the individual Plaintiff and those referenced herein.

STATUTORY HISTORY

8. Signed into law in 2014, the Compassionate Care Act New York Public Health Law § 3360 et. seq. (hereinafter referred to as "CCA") allows New Yorkers to access medical marijuana.
9. The act was implemented by the Department of Health (DOH) through regulations finalized in April 2015, and legal medical marijuana was available for sale beginning in January 2016. Although New York was the 24th state to legalize medical marijuana, the regulatory framework was widely labeled as the most restrictive in the country at the time.
10. In July 2015, the DOH authorized five vertically integrated Registered Organizations (ROs) to grow, manufacture and dispense medical-grade cannabis. Under their authorizations, ROs are allowed to operate growing and/or manufacturing facilities and a maximum of four dispensaries. Dispensaries may only sell "approved" medical marijuana products, which are those that the DOH has put through

rigorous laboratory testing for, among other things, potency and chemical composition, and which may only be sold in specific dosage forms.

11. Patients seeking to use legal marijuana in New York must suffer from a debilitating or life-threatening condition and a severe symptom associated with that condition, as expressly enumerated in the CCA itself. In this respect, medical marijuana could only be recommended for 10 disease states in the early months of the program.
12. To participate in the medical marijuana program as a patient, a person is required to enroll online through the DOH website. They must then be seen by a certified provider and that provider must determine that the person suffers from a qualifying disease and a qualifying symptom. The provider may then make a recommendation for medical marijuana, which must be submitted to the DOH, along with other documentation, in order to become a “certified” patient. The DOH then issues the patient a registration card. Once a patient has a registration card, they may visit one of a limited number of dispensaries, as described above, where they are counseled about using medical marijuana by a licensed pharmacist. After completing the process, patients can purchase up to a 30-day supply of medicine. As a general matter, health insurance does not cover medical marijuana, and patient costs range from \$100 to well in excess of \$1,000 per month.
13. The CCA specifically prohibits, as a rule, employment discrimination against disabled persons.
14. Particularly, the CCA provides that certified patients “shall not be denied any right or privilege” based on their legal marijuana use. Further, “being a certified patient shall be deemed [as] having a disability” under the human rights law, civil rights law, penal law

and criminal procedure law, and anti-discrimination laws prohibit employers from discriminating against disabled persons. Employers are obligated to engage in the interactive process with employees prescribed medical marijuana, and that continued medical marijuana use may be a reasonable accommodation.

15. Cannabis is considered a controlled substance federally under the Controlled Substance Act 21 U.S.C.A. §§ 801 et seq. (hereinafter referred to as “CSA”) yet does not preempt state law.
16. The CSA does not make it illegal to employ a marijuana user. Nor does it purport to regulate employment practices in any manner. It also contains a provision that explicitly indicates that Congress did not intend for the CSA to preempt state law unless there is a positive conflict between the CSA and state law (CCA) so that the two cannot consistently stand together.
17. Where an employer has a drug policy prohibiting the use of marijuana, even where lawfully prescribed by a physician, the employer would have a duty to engage in an interactive process with the employee to determine whether there were equally effective medical alternatives [to marijuana] whose use would not be in violation of its policy.
18. Further, where, a company's policy prohibiting any use of marijuana is applied against a disabled employee who is being treated with marijuana by a licensed physician for his or his medical condition, the termination of the employee for violating that policy effectively denies a disabled employee the opportunity of a reasonable accommodation, and therefore is appropriately recognized as disability discrimination.
19. Failing a drug test is not a valid basis for terminating a legal medical marijuana user

unless the employer unsuccessfully sought to obtain agreement with the employee on an accommodation other than marijuana.

20. A failed drug test is one that is the “result of illegal drug use.” A person who has been lawfully prescribed medical marijuana in New York State who tests positive for marijuana has not failed as a result of illegal drug use and is contrary to the legislative intent of the CSA which classifies individuals prescribed medical marijuana as disabled.
21. On September 24, 2018, New York State Legislature amended the CCA McKinney's Public Health Law § 3360 (a) (7) (i) to include the use of medical marijuana is an alternative to opioid use, substance use disorder to the list of infirmities that a prescription for medical marijuana could be given.

FACTUAL ALLEGATIONS

22. Plaintiff was born with a birth defect to his pancreas. This birth defect makes Plaintiff prone to pancreatitis which is exacerbated when Plaintiff takes prescription drugs.
23. Plaintiff joined the New York City Police Department as a Police Officer in January 2008.
24. While working as a member of the School Safety Task Force in Queens County, New York, Plaintiff sprained his shoulder in 2010.
25. In 2010, Plaintiff further fractured his shin bone in each of his legs while wrestling with a student who assaulted a teacher and subsequently resisted arrest.
26. On or around late 2011/early 2012, Plaintiff began taking medication for anxiety. Plaintiff was prescribed Soloff and Ambien to help him deal with his anxiety.
27. In 2012, Plaintiff was involved in a Line of Duty car accident while he was assigned to the 67th Precinct where the vehicle he was in T-boned another vehicle, injuring

Plaintiff's his neck and back.

28. In June 2014, Plaintiff was diagnosed with anxiety disorder and chronic insomnia.
29. On or around June 2015, Plaintiff tore his anterior crucial ligament while assigned to 60th Precinct. This injury was considered non Line of Duty by the NYPD.
30. Following Plaintiffs, multiple Line of Duty injuries he was prescribed various opioids to help manage his chronic pain.
31. Plaintiff has been prescribed Percocet, OxyContin, Hydrocodone, Tramadol, and Morphine to help manage his chronic pain.
32. As a result of the opioids that Plaintiff was prescribed, in addition to the anxiety and sleeping medication, Plaintiff began having regular bouts of pancreatitis starting in 2016. Plaintiff would ultimately have three (3) separate re-occurrences of pancreatitis.
33. In October 2017, Plaintiff was diagnosed with depression.
34. Plaintiff was placed on restricted duty on November 2018 which included having his gun and shield removed.
35. In December 2018, Plaintiff was given antibiotics for Lyme Disease but was not officially diagnosed due to the invasiveness of the diagnostic test. Plaintiff was diagnosed at this time with Chronic Pain.
36. In October 2019, Plaintiff was hospitalized where he remained for several days in a coma. At this time, doctors were able to test Plaintiff for Lyme Disease through a spinal tap which confirmed he had Lyme Disease. Plaintiff was also diagnosed with fibromyalgia.
37. Following this hospitalization, Plaintiff spoke with his private doctor who informed

him that due to his chronic pain and the number of opioids and other medications he was prescribed, Plaintiff was at serious risk for overdose and death as a result of the volume of medicine he was prescribed and his birth defect which made processing of prescription medication particularly dangerous.

38. Plaintiff's private doctor further stated that Plaintiff needed to immediately consider lessening the amount of prescription medication that he takes as it could kill him.

39. Plaintiff's private doctor spoke to him about and ultimately prescribed Plaintiff medical marijuana as a way to ween Plaintiff off the numerous opioids he was prescribed and help combat his Chronic Pain.

40. Plaintiff, despite having a lawful prescription to use medical marijuana, did not fill his prescription at that time and continued taking his other prescribed medication despite the risk that these medications could be fatal to Plaintiff.

41. Between February 2019 and May 2019, Plaintiff was having severe issues with his anxiety and insomnia.

42. Plaintiff was referred to Psych Services within the NYPD for psychiatric evaluation. At this evaluation, Plaintiff was asked what religion he was. He responded that he is Catholic. Plaintiff informed the doctor at Psych Services that he was fascinated by religion and even had read Satanic Bibles out of curiosity.

43. Psych Services did not like these responses and sent Plaintiff to the Psychiatrist hospital despite having no outward manifestations of homicidal nor suicidal ideations at that time.

44. Plaintiff went to the Psychiatric hospital under surveillance for twelve (12) hours but

was released the following morning as he was not a threat to himself or others.

45. Following the night in the hospital also in May 2019, Plaintiff had a doctor's appointment at the Medical Division with District Surgeon Dr. Joseph Hedderman.
46. At this appointment, Dr. Hedderman commented on the numerous opioid prescriptions that Plaintiff was prescribed and stated that this combination of medication could be fatal to Plaintiff.
47. Plaintiff explained that he was aware of this as he was previously informed of the potential fatality of his prescription drug combination and that his private doctor suggested that he take and ultimately prescribed him medical marijuana.
48. Dr. Hedderman stressed to Plaintiff the importance of Plaintiff weaning himself off of the potentially fatal opioid combination that he was taking and approved Plaintiff's medical marijuana which would provide him with the same pain relief and would be significantly less dangerous than the high dosage of opioids he was currently taking.
49. Dr. Hedderman proceeded to continue to advise Plaintiff try to work to wean himself off of the opioids.
50. At this time, Plaintiff had obtained the reasonable accommodation to allow him to use medical marijuana from the NYPD's Medical Division.
51. Immediately following the doctor's appointment with Dr. Hedderman in which Plaintiff was given approval to use medical marijuana in an effort to save his life, the NYPD's Internal Affairs Bureau (hereinafter referred to as "IAB") began following and surveilling Plaintiff.
52. Plaintiff was given a "random" drug test on September 5, 2019 by a sergeant from IAB

where he tested positive for marijuana.

53. At this time Plaintiff, was using his prescribed marijuana and attempting to wean himself off of Tramadol, Morphine and Gabapentin.

54. Following the drug test, Plaintiff was again hospitalized for pancreatitis due to stress and pill usage, on September 11, 2020. Plaintiff remained in the hospital until September 15, 2020.

55. After being released from the hospital, Plaintiff was informed by IAB that he was being suspended for thirty (30) days without pay as a result of his positive drug test for marijuana.

56. Plaintiff attempted to explain that he had been allowed to use his marijuana as it was legally prescribed and approved by Dr. Hedderman at the NYPD's Medical Division.

57. Plaintiff proceeded to show the IAB Sergeant his prescription card.

58. Plaintiff's sister, a fellow police officer, was told by IAB that the "job would never approve of an officer using marijuana."

59. Plaintiff also "failed" his "random" drug test for morphine which was given to him in the hospital and other Tramadol which were also prescribed to him but the NYPD took no action related to that positive test.

60. IAB proceeded to take Plaintiff into custody overnight where he was forced to remain at IAB's office on Hudson Street overnight while he was harassed by several officers within IAB.

61. Plaintiff while in the custody of IAB began belittling and harassing Plaintiff.

62. Plaintiff was called a hypochondriac and was accused of faking his illnesses. Plaintiff

was further made fun of by the members of service present in IAB for the duration of the night. Plaintiff was also bizarrely asked if he was dating any women who had AIDS. This harassment occurred in front of an IAB sergeant who took no steps to intervene.

63. Further, while Plaintiff was using the bathroom where he was being held on Hudson Street. While in the process of using the bathroom an officer from IAB opened the restroom door. The remaining officers in the office (approximately 5) began pointing and laughing at Plaintiff who was sitting on the toilet.

64. Following the unlawful confinement of Plaintiff, he was taken to Elmhurst Hospital.

65. Plaintiff was not suspended at this time and was allowed to use medical marijuana for approximately the next month.

66. Plaintiff's NYPD' identification was taken at this time which caused Plaintiff difficulty entering any NYPD facility.

67. During this time, Plaintiff would have regular panic attacks as a result of IAB's constant harassment. These attacks occurred approximately two (2) or three (3) times a week.

68. Plaintiff continued using medical marijuana which he communicated regularly to the Medical Division during his mandated appointments.

69. Plaintiff continued to take Amlodipine, Sertraline and Ambien. Further, Plaintiff was using the medical marijuana in an effort to wean him off of Tramadol and Gabapentin.

70. Plaintiff was told by his private doctor that his use of Gabapentin coupled with the stress stemming from work related to his usage of medical marijuana was causing his

bouts with pancreatitis and that he needed to cease using Gabapentin.

71. Plaintiff was again subjected to a “random” drug test on October 29, 2019. Plaintiff “failed” the drug test for medical marijuana.

72. Following the positive drug test, IAB ordered Plaintiff to stop using medical marijuana.

73. Plaintiff continued having panic attacks as a result of IAB’s constant harassment.

74. The following day, Plaintiff, on October 30, 2019, while having a panic attack due to IAB’s constant harassment and interference, had suffered a severe asthma attack.

75. Plaintiff called 911 where he communicated that he was suicidal and in need of assistance.

76. Multiple ambulances and dozens of NYPD patrol vehicles responded to the scene to assist Plaintiff.

77. Plaintiff was then taken to Richmond University Hospital where he was placed on a ventilator as he could no longer breathe on his own.

78. Plaintiff remained in a coma for seven (7) days which was brought on due to the stress related to the additional drug tests and orders by IAB.

79. While in a coma, Plaintiff was handcuffed to his hospital bed for the first three (3) days he was in the hospital.

80. Plaintiff was intubated at the hospital as a result of vomiting which caused aspiration in his lungs which ultimately lead to pneumonia.

81. While in the hospital a detective from IAB called Plaintiff’s sister, a NYPD police officer, to speak about Plaintiff’s health status. The Detective told Plaintiff’s sister that

“all we can do is pray for your brother.”

82. Prior to his discharge Plaintiff was diagnosed as Bi-Polar.
83. Plaintiff remained in the hospital from October 30, 2019 until November 21, 2019 when he was discharged.
84. On November 22, 2019, Plaintiff was informed by IAB that he was being suspended for thirty (30) days as a result of his positive drug test for marijuana.
85. Plaintiff was forced to turn over his NYPD identification card.
86. Upon returning from suspension on December 23, 2019, Plaintiff was restored to duty and transferred to the Quartermaster Unit in Queens.
87. At this time in a GO15 it was suggested to Plaintiff by IAB that if he wanted to stay out of trouble he would have to change his meds.
88. Plaintiff interpreted this statement as he could stay out of trouble if he went back on opioids.
89. This assignment required Plaintiff to travel to work which is a common form of retaliation within the NYPD referred to as “highway therapy.”
90. In January, 2020 Plaintiff suffered an asthma attack as a result of the stress he was enduring at the time.
91. Plaintiff continued having panic attacks throughout this time.
92. Plaintiff was being harassed by a Lieutenant in the Quartermaster Unit.
93. Plaintiff was stuck in a cold and dusty room which was meant to exacerbate his debilitating conditions.

94. More specifically, the cold room was particularly painful due to his chronic pain syndrome and fibromyalgia. The dust caused Plaintiff to have trouble breathing.
95. The treatment got so bad that a family friend of Plaintiff who is an attorney, contacted IAB and made a complaint about the torture Plaintiff was being subjected to.
96. Plaintiff was subsequently yelled at by the Lieutenant for contacting IAB.
97. Plaintiff's work conditions did not improve.
98. Plaintiff reported the conditions to Dr. Harrison in the Medical Division but no corrective action was taken.
99. Two days after filing a complaint with IAB, Plaintiff was again "randomly" drug tested by IAB causing Plaintiff more anxiety.
100. IAB continued to surveille Plaintiff during this time.
101. The NYPD would regularly place an unmarked patrol cars outside of Plaintiff's house for months on end.
102. Plaintiff viewed this as threatening and caused him great emotional unrest.
103. The unmarked patrol cars were so obvious that Plaintiff's neighbor notice and informed Plaintiff of the constant surveillance.
104. The emotional distress caused by the Defendant's surveillance and unwillingness to accommodate Plaintiff caused Plaintiff to have a series of psychiatric episodes where he would have severe panic attacks.
105. Defendant knew about Plaintiff's mental health diagnoses but continued to discriminate and retaliate against Plaintiff causing his mental health to deteriorate.
106. During this time Plaintiff would repeatedly ask the NYPD's Medical Division to

assist him yet they refused.

107. Upon information and belief, IAB informed the Medical Division not to assist Plaintiff.

108. Plaintiff, in fear of the retaliation of the Defendant and realizing that he would not be given the reasonable accommodation to allow him to continue working, put in his retirement papers for disability pension in January 2020 related to his physical diagnoses.

109. In February 2020, in fear of the retaliation of the Defendant and realizing that he would not be given the reasonable accommodation to allow him to continue working, put in his retirement papers for psychological disability pension.

110. Plaintiff's mental health continued to deteriorate during this time. Plaintiff was suffering from insomnia and panic attacks as a result of the Defendant's actions.

111. In February 2020, Plaintiff was approached by IAB who asked him to "vest" out of the department. It was clear that Plaintiff was about to be terminated if he didn't retire.

112. In March 2020, Plaintiff had a hearing with the NYPD's Medical Board related to his disability pension.

113. Plaintiff was approved for disability pension the same day he went before the Medical Board.

114. Following the decision of the Medical Board, IAB continued to investigate Plaintiff, exacerbating his conditions.

115. Plaintiff was further continuously harassed regarding his disability while

stationed at the Quartermaster Unit.

116. Plaintiff was forced to work in a particularly dusty environment which exacerbated his asthma and led to additional difficulty with breathing while at work.

117. Plaintiff's sister repeatedly reached out to the NYPD to seek assistance for Plaintiff. When she called PAPP (an anonymous NYPD division to speak with police officers regarding mental health and drug use), the Employee Assistance Unit and the Mobil Critical Response Units, she was told that there was nothing that they could do.

118. Plaintiff's last day of work with the NYPD was September 17, 2020 where he officially went out on disability pension.

119. Plaintiff would have remained an NYPD officer if he was granted the reasonable accommodation allowing him to use his prescribed medical marijuana.

120. Plaintiff is disabled under New York State and City law.

121. Defendant failed to provide Plaintiff with a reasonable accommodation of using medical marijuana to treat his disabilities.

122. Defendant arbitrarily rejected Plaintiff's request for a reasonable accommodation without further inquiry.

123. Defendant failed to duly consider Plaintiff's reasonable accommodation.

124. Defendant failed to engage in interactions with plaintiff nor deliberated as to Plaintiff's reasonable accommodation request to determine its viability.

125. Defendant failed to engage in a good faith interactive process that assessed the needs of the disabled Plaintiff and the reasonableness of his accommodation.

126. Plaintiff could have performed the essential functions as a police officer with

accommodation as the Defendant specifically told Plaintiff that he could continue to perform his work with the NYPD if he went back on opioids.

127. The CITY OF NEW YORK would not lose a federal contract or funding if they were to comply with the CCA.

COUNT I
DISABILITY DISCRIMINATION
IN VIOLATION OF NEW YORK
STATE EXECUTIVE LAW § 296

128. Plaintiff re-alleges and incorporates all paragraphs contained herein by reference to Count I of this complaint.

129. Plaintiff alleges that New York State Executive Law §296, prohibits discrimination, harassment, and disparate treatment on the basis of disability in employment.

130. Plaintiff performed his job duties satisfactorily which is reflected in Plaintiff's stellar performance evaluations. Nevertheless, Defendant denied Plaintiff benefits of employment, including all favorable conditions and emoluments thereof because of Plaintiff's disability, created a hostile work environment and suffered a constructive discharge by the conduct of Defendant CITY OF NEW YORK and those within its employ and without any non-discriminatory basis thereof. The wrongful conduct was condoned by the Defendant CITY OF NEW YORK.

131. Defendant's actions were taken under circumstances giving rise to an inference of discrimination.

132. The direct and proximate cause of Defendant's recklessness and negligence, Plaintiff lost his job, suffered lost past and future wages, lost other valuable benefits and emoluments of employment, hurt his credit rating, lost career and business

opportunities, suffered severe damage to his good name and reputation, and endured severe emotional pain and trauma, all to his detriment.

133. Plaintiff alleges defendant's CITY OF NEW YORK, engaged in various unlawful employment actions against Plaintiff based on his disability.

134. Plaintiff alleges that as a direct and proximate result of the unlawful employment practices of defendant CITY OF NEW YORK, Plaintiff incurred significant legal costs, back pay, front pay, compensatory damages, attorneys' fees, emotional distress, and damage to his personal and professional reputation in an amount to be determined at trial.

COUNT II
DISABILITY DISCRIMINATION
HOSTILE WORK ENVIRONMENT
IN VIOLATION OF NEW YORK
STATE EXECUTIVE LAW § 296

135. Plaintiff re-alleges and incorporates all paragraphs contained herein by reference to Count II of this complaint.

136. Plaintiff alleges that New York State Executive Law §296, prohibits discrimination, harassment, and disparate treatment on the basis of disability in employment.

137. Plaintiff performed his job duties satisfactorily which is reflected in Plaintiff's stellar performance evaluations. Nevertheless, Defendant denied Plaintiff benefits of employment, including all favorable conditions and emoluments thereof because of Plaintiff's disability, created a hostile work environment and suffered a constructive discharge by the conduct of Defendant CITY OF NEW YORK and without any non-discriminatory basis thereof. The wrongful conduct was condoned by the Defendant

CITY OF NEW YORK.

138. Defendant's actions were taken under circumstances giving rise to an inference of discrimination.

139. Defendant subjected Plaintiff to a materially adverse and hostile work environment by subjecting him to ridicule, without supervisory intervention to discrimination and retaliation based on his disability.

140. The actions of the Defendant towards Plaintiff were severe and pervasive.

141. The direct and proximate cause of Defendant's recklessness and negligence, Plaintiff lost his job, suffered lost past and future wages, lost other valuable benefits and emoluments of employment, hurt his credit rating, lost career and business opportunities, suffered severe damage to his good name and reputation, and endured severe emotional pain and trauma, all to his detriment.

142. Plaintiff alleges defendant CITY OF NEW YORK, engaged in various unlawful employment actions against Plaintiff based on his disability.

143. Plaintiff alleges that as a direct and proximate result of the unlawful employment practices including a subjecting Plaintiff to a hostile work environment, of defendant CITY OF NEW YORK, Plaintiff incurred significant legal costs, back pay, front pay, compensatory damages, attorneys' fees, emotional distress, and damage to his personal and professional reputation in an amount to be determined at trial.

COUNT III
RETALIATION
IN VIOLATION OF NEW YORK
STATE EXECUTIVE LAW § 296

144. Plaintiff re-alleges and incorporates all paragraphs contained herein by

reference to Count III of this complaint.

145. Plaintiff alleges that New York State Executive Law §296, makes it unlawful to deny employment and benefits therein in retaliation for Plaintiff engaging in lawfully protected activity.

146. Plaintiff engaged in protected activity when he complained of disability discrimination and requested a reasonable accommodation therefrom.

147. Plaintiff was retaliated against by the Defendant CITY OF NEW YORK, as a result of his engagement in protected activity.

148. Defendant's actions were taken under circumstances giving rise to an inference of retaliation.

149. The direct and proximate cause of Defendant's recklessness and negligence, Plaintiff lost his job in that he was constructively discharged, suffered lost past and future wages, lost other valuable benefits and emoluments of employment, hurt his credit rating, lost career and business opportunities, suffered severe damage to his good name and reputation, and endured severe emotional pain and trauma, all to his detriment.

150. Plaintiff alleges defendant CITY OF NEW YORK engaged in various unlawful employment actions against Plaintiff in retaliation for Plaintiff's lawfully protected complaints.

151. Plaintiff alleges that as a direct and proximate result of the unlawful employment practices of defendant CITY OF NEW YORK Plaintiff incurred significant legal costs, back pay, front pay, compensatory damages, attorneys' fees, emotional distress, and damage to his personal and professional reputation in an

amount to be determined at trial.

COUNT IV
DISABILITY DISCRIMINATION
IN VIOLATION OF NEW YORK CITY
ADMINISTRATIVE CODE § 8-107

152. Plaintiff re-alleges and incorporates all paragraphs contained herein by reference to Count IV of this complaint.
153. Plaintiff alleges that New York City Administrative Code § 8-107, makes it unlawful to deny employment on the basis of his disability.
154. Plaintiff performed his job duties satisfactorily which is reflected in Plaintiff's stellar performance evaluations. Nevertheless, Defendant denied Plaintiff benefits of employment, including all favorable conditions and emoluments thereof because of Plaintiff's disability, created a hostile work environment and suffered a constructive discharge by the conduct of Defendant CITY OF NEW YORK. The wrongful conduct was condoned by the Defendant CITY OF NEW YORK.
155. Defendant's actions were taken under circumstances giving rise to an inference of discrimination.
156. The direct and proximate cause of Defendant's recklessness and negligence, Plaintiff lost his job, suffered lost past and future wages, lost other valuable benefits and emoluments of employment, hurt his credit rating, lost career and business opportunities, suffered severe damage to his good name and reputation, and endured severe emotional pain and trauma, all to his detriment.
157. Plaintiff alleges defendant CITY OF NEW YORK engaged in various unlawful employment actions against Plaintiff based on his disability.
158. Plaintiff alleges that as a direct and proximate result of the unlawful

employment practices of defendant CITY OF NEW YORK, Plaintiff incurred significant legal costs, back pay, front pay, compensatory damages, punitive damages, attorneys' fees, emotional distress, and damage to his personal and professional reputation in an amount to be determined at trial.

COUNT V
DISABILITY DISCRIMINATION
HOSTILE WORK ENVIRONMENT
IN VIOLATION OF NEW YORK CITY
ADMINISTRATIVE CODE § 8-107

159. Plaintiff re-alleges and incorporates all paragraphs contained herein by reference to Count V of this complaint.
160. Plaintiff alleges that New York City Administrative Code § 8-107, makes it unlawful to deny employment on the basis of his disability.
161. Plaintiff performed his job duties satisfactorily which is reflected in Plaintiff's stellar performance evaluations. Nevertheless, Defendant denied Plaintiff benefits of employment, including all favorable conditions and emoluments thereof because of Plaintiff's disability, created a hostile work environment and suffered a constructive discharge by the conduct of Defendant CITY OF NEW YORK and without any non-discriminatory basis thereof. The wrongful conduct was condoned by the Defendant CITY OF NEW YORK.
162. Defendant's actions were taken under circumstances giving rise to an inference of discrimination.
163. Defendant subjected Plaintiff to a materially adverse and hostile work environment by subjecting him, day after day, month after month, without supervisory intervention to discrimination and retaliation based his disability.

164. The actions of the Defendant towards Plaintiff were severe and pervasive.
165. The direct and proximate cause of Defendant's recklessness and negligence, Plaintiff lost his job, suffered lost past and future wages, lost other valuable benefits and emoluments of employment, hurt his credit rating, lost career and business opportunities, suffered severe damage to his good name and reputation, and endured severe emotional pain and trauma, all to his detriment.
166. Plaintiff alleges defendant CITY OF NEW YORK engaged in various unlawful employment actions against Plaintiff based on his disability.
167. Plaintiff alleges that as a direct and proximate result of the unlawful employment practices, including subjecting Plaintiff to a hostile work environment, of defendant CITY OF NEW YORK Plaintiff incurred significant legal costs, back pay, front pay, compensatory damages, punitive damages, attorneys' fees, emotional distress, and damage to his personal and professional reputation in an amount to be determined at trial.

COUNT VI
RETALIATION
IN VIOLATION OF NEW YORK CITY
ADMINISTRATIVE CODE § 8-107

168. Plaintiff re-alleges and incorporates all paragraphs contained herein by reference to Count VI of this complaint.
169. Plaintiff alleges that New York City Administrative Code § 8-107, makes it unlawful to deny employment in retaliation for Plaintiff engaging in protected activity.
170. Plaintiff engaged in protected activity when she complained of discrimination and requested a reasonable accommodation related to his disability.
171. Plaintiff was retaliated against by the Defendant CITY OF NEW YORK, as a

result of his engagement in protected activity.

172. Defendant's actions were taken under circumstances giving rise to an inference of retaliation.

173. The direct and proximate cause of Defendant's recklessness and negligence, Plaintiff lost his job in that he was constructively discharged, suffered lost past and future wages, lost other valuable benefits and emoluments of employment, hurt his credit rating, lost career and business opportunities, suffered severe damage to his good name and reputation, and endured severe emotional pain and trauma, all to his detriment.

174. Plaintiff alleges defendant CITY OF NEW YORK engaged in various unlawful employment actions against Plaintiff in retaliation for Plaintiff's lawfully protected complaints.

175. Plaintiff alleges that as a direct and proximate result of the unlawful employment practices of defendant CITY OF NEW YORK Plaintiff incurred significant legal costs, back pay, front pay, compensatory damages, punitive damages, attorneys' fees, emotional distress, and damage to his personal and professional reputation in an amount to be determined at trial.

COUNT VII
DISABILITY DISRIMINATION
STRICT LIABILITY IN VIOLATION OF
NEW YORK CITY ADMINISTRATIVE CODE § 8-107(13)(b)

176. Plaintiff re-alleges and incorporates all paragraphs contained herein by reference to Count VII of this complaint.

177. Plaintiff alleges that New York City Administrative Code § 8-107 (13) (b), makes a Defendant strictly liable for the discriminatory acts of managers and supervisors

against a subordinate employee, such as the Plaintiff herein.

178. Plaintiff was subjected to repeated disability discrimination following the lawful complaints made by Plaintiff regarding his reasonable accommodation and disability.

179. The Defendant was aware of the actions of managers and supervisors, including but failed to take corrective remedial action which forced Plaintiff to be subjected to future discrimination.

180. The Defendant failed to exercise reasonable diligence to prevent such discriminatory conduct.

181. Plaintiff performed his job duties satisfactorily which is reflected in Plaintiff's stellar performance evaluations. Nevertheless, Defendant denied Plaintiff benefits of employment, including all favorable conditions and emoluments thereof because of Plaintiff's disability, created a hostile work environment and suffered a constructive discharge by the conduct of Defendant CITY OF NEW YORK and without any non-discriminatory basis thereof. The wrongful conduct was condoned by the Defendant CITY OF NEW YORK.

182. Defendant's actions were taken under circumstances giving rise to an inference of discrimination.

183. The direct and proximate cause of Defendant's recklessness and negligence, Plaintiff lost his job, suffered lost past and future wages, lost other valuable benefits and emoluments of employment, hurt his credit rating, lost career and business opportunities, suffered severe damage to his good name and reputation, and endured severe emotional pain and trauma, all to his detriment.

184. Plaintiff alleges defendant CITY OF NEW YORK engaged in various unlawful

employment actions against Plaintiff based on his disability.

185. Plaintiff alleges that as a direct and proximate result of the unlawful employment practices of defendant CITY OF NEW YORK Plaintiff incurred significant legal costs, back pay, front pay, compensatory damages, punitive damages, attorneys' fees, emotional distress, and damage to his personal and professional reputation in an amount to be determined at trial.

186. As a result of Defendant's willful actions they are strictly liable to Plaintiff for their actions.

COUNT VIII
RETALIATION
STRICT LIABILITY IN VIOLATION OF
NEW YORK CITY ADMINISTRATIVE CODE § 8-107(13)(b)

187. Plaintiff re-alleges and incorporates all paragraphs contained herein by reference to Count VIII of this complaint.

188. Plaintiff alleges that New York City Administrative Code § 8-107 (13) (b), makes a Defendant strictly liable for the acts of managers and supervisors against a subordinate employee, such as the Plaintiff herein.

189. Plaintiff was subjected to repeated retaliatory acts following the lawful complaints made by Plaintiff regarding disability discrimination.

190. The Defendant was aware of the actions of managers and supervisors but failed to take corrective remedial action which forced Plaintiff to be subjected to future retaliation.

191. The Defendant failed to exercise reasonable diligence to prevent such retaliatory conduct.

192. Plaintiff performed his job duties satisfactorily which is reflected in Plaintiff's

stellar performance evaluations. Nevertheless, Defendant denied Plaintiff benefits of employment, including all favorable conditions and emoluments thereof because of Plaintiff's disability, created a hostile work environment and suffered a constructive discharge by the conduct of Defendant CITY OF NEW YORK without any non-discriminatory basis thereof. The wrongful conduct was condoned by the Defendant CITY OF NEW YORK.

193. Defendant's actions were taken under circumstances giving rise to an inference of retaliation.

194. The direct and proximate cause of Defendant's recklessness and negligence, Plaintiff lost his job, suffered lost past and future wages, lost other valuable benefits and emoluments of employment, hurt his credit rating, lost career and business opportunities, suffered severe damage to his good name and reputation, and endured severe emotional pain and trauma, all to his detriment.

195. Plaintiff alleges defendant CITY OF NEW YORK engaged in various unlawful employment actions against Plaintiff in retaliation for his lawfully protected complaints of disability discrimination and reasonable accommodation request.

196. Plaintiff alleges that as a direct and proximate result of the unlawful employment practices of defendant CITY OF NEW YORK Plaintiff incurred significant legal costs, back pay, front pay, compensatory damages, punitive damages, attorneys' fees, emotional distress, and damage to his personal and professional reputation in an amount to be determined at trial.

197. As a result of Defendant's willful actions they are strictly liable to Plaintiff for their actions.

COUNT XI
NEGLIGENT HIRING

198. Plaintiff re-alleges and incorporates all paragraphs contained herein by reference to Count IX of this complaint.

199. Plaintiff alleges defendant CITY OF NEW YORK through its agents deprived him of constitutional and statutory rights by hiring and promoting unqualified individuals within their employ.

200. Plaintiff alleges defendant CITY OF NEW YORK through its agent's decision to hire and promote individuals who were not qualified and others within their employ reflects a deliberate indifference to the risk that a violation of a constitutional or statutory right would follow.

201. Plaintiff alleges because Defendant CITY OF NEW YORK through its agents decided to hire and promote hire and promote individuals who were not qualified and others within their employ he sustained constitutional and statutory injuries.

COUNT X
NEGLIGENT FAILURE TO TRAIN

202. Plaintiff re-alleges and incorporates all paragraphs contained herein by reference to Count X of this complaint.

203. Plaintiff alleges defendant CITY OF NEW YORK through its agents knows to a moral certainty that its employees will confront a given situation.

204. Plaintiff alleges the situation presents the employee with a difficult choice of the sort either that training will make less difficult or that there is a history of employees mishandling the situation.

205. Plaintiff alleges mishandling those situations will frequently cause the deprivation of a citizen's constitutional rights.

206. Plaintiff alleges because defendant CITY OF NEW YORK through its agents failure to train its employees regarding disability discrimination and retaliation in the workplace he sustained constitutional and statutory injuries.

COUNT XI
NEGLIGENT FAILURE TO SUPERVISE

207. Plaintiff re-alleges and incorporates all paragraphs contained herein by reference to Count XI of this complaint.

208. Plaintiff alleges Defendant CITY OF NEW YORK through its agents knows to a moral certainty that its employees will confront a given situation.

209. Plaintiff alleges the situation presents the employee with a difficult choice of the sort either that training will make less difficult or that there is a history of employees mishandling the situation.

210. Plaintiff alleges mishandling those situations will frequently cause the deprivation of a citizen's constitutional rights.

211. Defendant failed to properly supervise its employees causing Plaintiff to suffer significant economic and psychological injuries.

212. Plaintiff alleges because Defendant THE CITY OF NEW YORK through its agents failure to supervise its employees he sustained constitutional and statutory injuries.

COUNT XII
NEGLIGENT FAILURE TO DISCIPLINE

213. Plaintiff re-alleges and incorporates all paragraphs contained herein by reference to Count XII of this complaint.

214. Plaintiff alleges defendant THE CITY OF NEW YORK through its agents

deprived him of constitutional and statutory rights by failing to discipline those within their employ.

215. Plaintiff alleges Defendant THE CITY OF NEW YORK through its agent's failure to discipline those within its employ reflects a deliberate indifference to the risk that a violation of a constitutional or statutory right would follow.

216. Plaintiff alleges because of the inaction of Defendant CITY OF NEW YORK he sustained constitutional and statutory injuries.

COUNT XIII

DISCRIMINATION IN VIOLATION OF NEW YORK HEALTH LAW §3369

217. Plaintiff re-alleges and incorporates all paragraphs contained herein by reference to Count XIII of this complaint.

218. New York Health Law §3369 makes it unlawful to for an employer to discriminate against a certified patient shall be deemed to be having a "disability" under article fifteen of the executive law (human rights law), section forty-c of the civil rights law, sections 240.00, 485.00, and 485.05 of the penal law, and section 200.50 of the criminal procedure law.

219. Plaintiff was a certified patient who was disabled.

220. Plaintiff was discriminated and retaliated against as a result of being a certified Patient.

221. Plaintiff alleges that as a direct and proximate result of the unlawful employment practices of defendant CITY OF NEW YORK Plaintiff incurred significant legal costs, back pay, front pay, compensatory damages, punitive damages, attorneys' fees, emotional distress, and damage to his personal and professional

reputation in an amount to be determined at trial.

JURY TRIAL

222. Plaintiff demands a trial by jury of all issues in this action that are so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that the Court:

- a. An injunction mandating that the New York City Police Department and CITY OF NEW YORK comply with the Compassionate Care Act and thus allow New York City Police Officers who are lawfully prescribed medical marijuana to use their medication without any discriminatory or retaliatory actions from the CITY OF NEW YORK nor the NEW YORK CITY POLICE DEPARTMENT;
- b. Award compensatory damages for the back pay, front pay, pain, suffering, emotional distress, loss of dignity, humiliation, and damages to reputation and livelihood endured by Plaintiff and all other damages afforded to Plaintiff by statute or otherwise in an amount to be determined at trial;
- c. Award Plaintiff punitive damages in an amount to be determined at trial New York City Human Rights Law Administrative Code §8-502(a);
- d. Find Defendant strictly liable pursuant to New York City Human Rights Law Administrative Code §8-107(13)(b);
- e. Award Plaintiff costs for this action and reasonably attorneys' fees, as provided for in New York City Human Rights Law Administrative Code §8-502 (f);
- f. Grant Plaintiff such other and further relief as may be required in the interest of justice.

Dated: September 23, 2020

New York, NY

Respectfully submitted,

By: /s/
 John Scola

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VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, the undersigned, an attorney duly admitted to practice law in the State of New York, under penalties of perjury do affirm;

That I am the attorney of record for the plaintiff in the within matter and make this affirmation in accordance with CPLR 3020. I have read the within SUMMONS AND VERIFIED COMPLAINT and know the contents thereof to be true to your affirmant's own knowledge, with the exception of those matters therein stated to be alleged upon information and belief. Your affirmant bases his belief regarding those matters upon the contents of the file and conversation with witnesses and the claimant.

This verification is made by your affirmant and not by the claimant for the following reason; The claimants resides in a different County than where your affirmant maintains an office.

Dated: New York, New York
September 23, 2020

/s/
JOHN SCOLA