NO. 123599

IN THE
SUPREME COURT OF ILLINOIS

KENRICK ROBERTS,

PLAINTIFF – APPELLANT,

vs.

BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT NO. 508 d/b/a CITY COLLEGES OF CHICAGO,

DEFENDANT – APPELLEE.

On Appeal From
The Illinois Appellate Court, First District
No. 1-17-0067

There Heard On Appeal From
The Circuit Court of Cook County, Illinois
No. 15 L 9430
The Honorable Judge James Snyder, Presiding

BRIEF OF PLAINTIFF - APPELLANT

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE CASE

Plaintiff filed this action seeking redress against his former employer for common law retaliatory discharge, violation of the Illinois Whistleblower Act (740 ILCS 174/20), and wrongful termination. (R.C517-535.)[1] The Plaintiff, Kenrick Roberts, the Director of Medical Programs at Malcolm X College -- a college operated by Defendant, Board of Trustees Community College District No. 508, d/b/a City Colleges of Chicago -- alleges that Defendant discharged him in retaliation for his complaints of and refusal to participate in the improper appointment and maintenance of an unqualified professor to teach at Malcolm X College. (R.C518-R.C533.)

This appeal is not based upon a jury verdict, but it is based upon questions raised on the pleadings.

On June 27, 2016, Plaintiff filed his Second Amended Complaint. (R.C517-535.) On July 29, 2016, Defendant filed a 735 ILCS 5/2-615 Motion to Dismiss Count I (Retaliatory Discharge) and Count II (Violation of the Illinois Whistleblower Act, 740 ILCS 174/20) of Plaintiff's Second Amended Complaint. (R.C586.) The Defendant did not seek to dismiss Count III (Wrongful Termination) of the Plaintiff's Second Amended Complaint. (R.C537-599.)

On October 25, 2016, pursuant to 735 ILCS 5/2-615, Judge Snyder of the Circuit Court of Cook County, Law Division, granted the Defendant's Motion to Dismiss Count I (Retaliatory Discharge) and Count II (Violation of the Illinois Whistleblower Act, 740 ILCS 174/20) of the Plaintiff's Second Amended Complaint, with prejudice. (R.C632.)

[1] The Record on Appeal is cited to herein as "R.C" followed by the page number.

On April 16, 2018, the Appellate Court of Illinois, First District, issued its decision reversing the dismissal of Plaintiff's Retaliatory Discharge claim but affirming the dismissal of the Plaintiff's Illinois Whistleblower claim.[2] (A17 ¶ 43.) On September 26, 2018, the Plaintiff's Petition for Leave to Appeal was granted regarding the affirmation of the dismissal of the Plaintiff's Illinois Whistleblower claim. On September 26, 2018, the Defendant's Petition for Leave to Appeal was granted in connection with the reversal of the dismissal of Plaintiff's Retaliatory Discharge claim, and Case No. 123594 was consolidated with this appeal.

ISSUE PRESENTED FOR REVIEW

Whether the Appellate Court erred in dismissing the Plaintiff's claim under Section 20 of the Illinois Whistleblower Act for failing to plead that there was a request or demand by the employer that the employee engage in the illegal or unlawful conduct.

STATEMENT OF JURISDICTION

Illinois Supreme Court Rule 315 confers jurisdiction upon this Court. The Appellate Court issued its decision on April 16, 2018, and no petition for rehearing was filed. (A1.) On May 21, 2018, the Petition for Leave to Appeal was filed. On September 26, 2018, that Petition was granted. The filing of Appellant's brief is timely.

[2] The Appendix is cited to herein as "A" followed by the page number and the specific paragraph when applicable.

STATUTE INVOLVED

(740 ILCS 174/20)

Sec. 20. Retaliation for certain refusals prohibited. An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation, including, but not limited to, violations of the Freedom of Information Act.

STATEMENT OF FACTS

In March, 2013, Kenrick Roberts ("Roberts") began working for the Board of Trustees Community College District 508 d/b/a City Colleges of Chicago ("City Colleges") as the Clinical Coordinator of the Physician's Assistance Program at Malcolm X College. (A19 ¶ 4.) In or about June, 2014, Roberts was promoted to the position of Program Director of the Physician's Assistance Program at Malcolm X College. (A19 ¶ 5.) In or about November, 2014, Roberts was once again promoted to the position of Director of Medical Programs at Malcolm X College. (A19 ¶ 6.)

As the Director of Medical Programs at Malcolm X College, Roberts' job responsibilities and duties included vetting potential instructors for teaching various courses and curriculum, and ensuring that instructors assigned to teach various courses, including but not limited to, HeaPro 101, met the appropriate accreditation standards and had the correct qualifications to teach their assigned courses and curriculum. (A21 ¶ 13.) Despite this duty, Roberts was intentionally excluded from the process of assigning an instructor to teach HeaPro 101 for the 2015 school year. (A21 ¶ 14.)

On or about January 15, 2015, Roberts received complaints that the instructor assigned to teach HeaPro 101 was unqualified to teach the curriculum and course. (A21 ¶ 15.) As a result of these complaints, Roberts met with the HeaPro 101 instructor and questioned her qualifications to teach said curriculum and course. (A21 ¶ 16.) The instructor for HeaPro 101 informed Roberts that she had never taught phlebotomy before, she was unfamiliar with the requirements and certifications necessary to become a phlebotomist, phlebotomy was not her area of expertise, and she did not have any certifications in phlebotomy. Following this meeting it became clear to Roberts that the instructor was unqualified to teach the course. (A21 ¶ 17.)

HeaPro 101 includes instruction of phlebotomy and EKG (electrocardiogram). (A24 ¶ 32.) The National Accrediting Agency for Clinical Laboratory Sciences ("NAACLS") states that in order for a course/curriculum to be accredited and approved for phlebotomy, it must have qualified faculty. Under the NAACLS, in order to be qualified to teach phlebotomy within the phlebotomy or health care basic certificate program, the faculty needs to be a certified professional in that field, must demonstrate knowledge and proficiency in that field, and must demonstrate the ability to teach effectively at the appropriate level. (A24 ¶ 33.) A professor can be certified in phlebotomy by the National Phlebotomy Association ("NPA") or through the American Society of Clinical Pathologists ("ASCP"). The NPA requires recertification on an annual basis and continuing education courses. (A25 ¶ 34.)

The professor appointed to teach phlebotomy -- without Roberts' input -- was not qualified under the NAACLS, as she was not a certified professional in that field, she did not demonstrate the knowledge and proficiency of that field, and she did not demonstrate

the ability to teach effectively at the appropriate level. (A25 ¶ 37.) When the first professor who was unqualified to teach the phlebotomy section of HeaPro 101 abandoned her class, the Defendant replaced her with a professor who was unqualified to teach the EKG portion of the course, as he was not a certified professional in that field, he did not demonstrate the knowledge and proficiency of that field, and he did not demonstrate the ability to teach effectively at the appropriate level. (A25 ¶ 38.)

On or about January 15, 2015, Roberts sent an email to his direct supervisors, Dr. Young and Dr. De La Haye, complaining about the faculty assignment of an unqualified professor. (A21 ¶ 18.) Roberts' January 15, 2015 email states:

> In compliance with the City Colleges of Chicago policy and the College of Health Science credentialing standards and requirements, it is my responsibility as Program Director of HeaPro 101 to review, evaluate and approve the recommendation of each faculty member that is approved to teach in a program which I am the director. Taking into consideration I had no input into the department decision to appoint a nurse to teach HeaPro 101 without my review of the credentials and necessary certifications and licenses put our programs and students at risk. Please note this is a breach of the standards that were developed to ensure that the students obtain the best outcomes moving forward with their education in the medical field. Please note I am very concerned about the direction in which we are traveling and wish to address this matter. (A22 ¶ 19.)

Upon receipt of Roberts' January 15, 2015 email, Dr. Young sent an email to the President and Provost of Malcolm X College stating his concerns about the unqualified professor assigned to teach HeaPro 101 and questioned them how to address the issue. (A22 ¶ 20.)

Following his January 15, 2015 email, Roberts made verbal complaints to Dr. Anthony Munroe ("Dr. Munroe"), President of Malcolm X College, regarding the appointment of an unqualified professor to teach HeaPro 101. He informed Dr. Munroe that he was intentionally excluded from the selection process of this unqualified professor

and that he refused to support the assignment of this unqualified professor. (A22 ¶ 21, A24 ¶ 30.)

On February 25, 2015, Roberts sent an email to the President, Vice President, and Associate Provost again complaining about the unqualified professor assigned to teach HeaPro 101. In addition to stating that the professor admitted never teaching phlebotomy before and not being familiar with the certification requirements for phlebotomists, Roberts stated that he learned from a student that the unqualified professor had abandoned her class (HeaPro 101) and another unqualified professor, who was not properly certified to teach the EKG portion of the course, was assigned to complete the remainder of the course. Roberts further complained that he was excluded from the decisions in selecting these unqualified professors, despite this being one of his job duties and responsibilities as Director of Medical Programs at Malcolm X College. (A22 ¶ 22.)

Upon receipt of Roberts' February 25, 2015 email, Dr. Christopher Robinson-Easley ("Dr. Easley"), Vice President of Malcolm X College, requested that Roberts meet with her that day regarding his complaints contained in his email. (A23 ¶ 23.)

After receiving Dr. Easley's meeting request, Roberts sent an email to Aaron Allen ("Allen"), Executive Director of Labor & Employee Relations, stating that he wanted to document that he felt very uncomfortable about the meeting request considering his complaints regarding the unqualified professor assignment. (A23 ¶ 24.)

On February 25, 2015, Roberts met with Dr. Easley, who was the individual who selected and assigned the unqualified professor to teach HeaPro 101. At the meeting, Dr. Easley was very upset with Roberts in connection with his complaints about the assignment

of the professor teaching HeaPro 101. Dr. Easley expressed no interest in addressing the problem. (A23 ¶ 25.)

The failure to appoint a qualified professor for HeaPro 101 endangered the students in their ability to receive the proper knowledge and instruction to become a CNA, PCA, Phlebotomist Technician and/or EKG Technician. Additionally, by appointing and maintaining an unqualified professor, the Defendant was in violation of Federal and State grant and financial aid programs requirements. (A26 ¶ 39.) Under Title IV of the Higher Education Act of 1965 ("Title IV/HEA"), Congress established various student loan and grant programs, including the Federal Pell Grant Program ("Pell"), Federal Supplemental Educational Opportunity Grand ("FSEOG"), Federal Direct Stafford Loan Program ("Stafford"), Federal Direct Plus Loan Program ("PLUS"), and Federal Work Study ("FWS") to assist in making available the benefits of postsecondary education to eligible students in institutions of higher education, such as the City Colleges. 20 U.S.C. §§ 1070-1099. (A26 ¶ 40.) The majority of Defendant's students apply for and receive federal Title IV/HEA program assistance to pay for tuition and school related expenses. (A26 ¶ 41.) In order for Defendant's students to apply for and obtain Title IV/HEA program assistance, Malcolm X must be an eligible institution and be permitted to participate in the programs by the United States Department of Education ("DOE"). 34 C.F.R. § 668.14(a)(1). (A26 ¶ 42.)

As a condition to allowing the students at Malcolm X to receive federal funding under Title IV/HEA, the Defendant was required to sign a Program Participation Agreement ("PPA"), whereby the Defendant agreed to comply with certain statutory, regulatory and contractual requirements detailed in 20 U.S.C. § 1094 and supporting

regulations, including 34 C.F.R. § 668.14. (A26 ¶ 43.) By appointing and maintaining an unqualified professor, the Defendant was in violation of Federal and State grant and financial aid programs requirements, including the Program Participation Agreement (and in violation of 20 U.S.C. § 1094(a)(21), 20 U.S.C. § 1094(c)(3)(A), and 34 C.F.R. § 668.14). (A27 ¶ 44.)

The PPA requires that Defendant "will meet the requirements established by . . . accrediting agencies or associations. . .." 20 U.S.C. § 1094(a)(21). (A27 ¶ 45.) The Defendant's improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101 was in violation of the requirements established by the accrediting agencies. (A27 ¶ 46.) By appointing and maintaining an unqualified professor, the Defendant was in violation of their accrediting standards and requirements (and in violation of 20 U.S.C. § 1094(a)(21) and 20 U.S.C. § 1094(c)(3)(A)). (A27 ¶ 47.) The Defendant, by entering into the PPA, not only agreed to meet the requirements established by the nationally recognized accrediting agencies that accredit Malcolm X, but it agreed to provide accurate information to these agencies. 20 U.S.C. § 1094(c)(3)(A). (A27 ¶ 48.) The Defendant provided inaccurate information to the accrediting agencies when it proclaimed that the professor was properly qualified to teach the students at Malcolm X College who were enrolled in class HeaPro 101. (A27 ¶ 49.)

Title IV/HEA also prohibits Malcolm X from engaging in "substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates." 20 U.S.C. § 1094(c)(3)(A). (A27 ¶ 50.) By appointing and maintaining an unqualified professor, the students did not receive the education that

they paid for (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the nature of its educational program"). (A28 ¶ 51.) By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 did not meet the certification requirements for phlebotomists (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the employability of its graduates.") (A28 ¶ 52.) The DOE has the authority to enforce the PPA and possesses the ability to terminate Malcolm X from the Title IV/HEA program. 34 C.F.R. §§ 600.41(a)(1); 668.86. (A28 ¶ 53.)

The ability to obtain the benefits of a postsecondary education by Illinois students through the financial help of Federal and State funded programs is an Illinois public policy. (A28 ¶ 54.) The improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101 violates a mandate of public policy in Illinois. (A28 ¶ 55.) By appointing and maintaining an unqualified professor, the Defendant jeopardized the students that attend the City Colleges from obtaining federal funding under Title IV/HEA, and other State grant and financial aid programs. (A28 ¶ 56.) The vast majority of the students that attend the City Colleges are only able to do so through the financial help of federal funding under Title IV/HEA. (A28 ¶ 57.) If the DOE used its authority to enforce the Defendant's PPA and terminated the City Colleges from the Title IV/HEA program (34 C.F.R. §§ 600.41(a)(1); 668.86), thousands of Illinois students would lose the benefit of obtaining a postsecondary education. (A28 ¶ 58.)

Following his February 25, 2015 complaints and meeting with Dr. Easley, Roberts continued to complain and question the appointment of the unqualified professor assigned to teach HeaPro 101 and Malcolm X College's failure to address and rectify the situation

to Dr. Munroe. (A23 ¶ 26.) In his complaints and refusals to participate and support Defendant's decision to appoint said professor without his knowledge, the Plaintiff explained that he could not and would not participate in the questionable and improper activities that Malcolm X College was involved in and that this issue needed to be addressed immediately, and that he was concerned with the education that the students were receiving from the unqualified professor. (A33 ¶ 74.) Following his complaints and meeting with Dr. Easley, Roberts was kept out of important meetings, discussions and decisions regarding programs that were under his responsibilities as Director of Medical Programs at Malcolm X College. (A23 ¶ 27.)

On or about June 15, 2015, Roy Walker ("Walker"), the Associate Dean of Health Sciences & Career Programs at Malcolm X College, told Roberts that Dr. Easley "has an axe to grind against you" because of Roberts' complaints about the assignment of an unqualified professor to teach HeaPro 101. (A24 ¶ 28.)

On or about June 28, 2015, Dr. Munroe, instructed Roberts to file an EEO Complaint against Dr. Easley for retaliation in connection with Roberts' complaints about the assignment of an unqualified professor to teach HeaPro 101. (A24 ¶ 29.) On June 28, 2015, Roberts completed and filed an Equal Opportunity Complaint Form with the City Colleges EEO Office claiming retaliation and hostile and intimidating work environment against Dr. Easley. (A24 ¶ 30.) On August 7, 2015, Roberts was advised that he was terminated from his Director of Medical Programs position at Malcolm X College. (A24 ¶ 31.)

STANDARD OF REVIEW

All matters before the Court in the case at bar are subject to *de novo* review. The standard of review of an issue of statutory interpretation is *de novo*. *County of Du Page v. Illinois Labor Relations Board*, 231 Ill.2d 593, 603 (2008). The standard of review on appeal from a motion to dismiss pursuant to 735 ILCS 5/2-615 is *de novo*. *Morris B. Chapman & Assocs. v. Kitzman*, 193 Ill.2d 560, 568 (2000).

ARGUMENT

I. This appeal presents an issue of statutory construction.

Section 20 of the Illinois Whistleblower Act ("Act") states, in its entirety:

> Sec. 20. Retaliation for certain refusals prohibited. An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation, including, but not limited to, violations of the Freedom of Information Act.

740 ILCS 174/20. To date, the Illinois Supreme Court has not interpreted this statutory language in order to define what elements must be pled to sustain a *prima facie* cause of action for a violation of Section 20 of the Act.

"When presented with an issue of statutory construction, this court's primary objective is to ascertain and give effect to the intent of the legislature." *Murphy-Hylton v. Liberman Management Services, Inc.*, 2016 IL 120394, ¶ 25, citing, *Valfer v. Evanston Northwestern Healthcare*, 2016 IL 119220, ¶ 22. The language employed in the statute, given its plain and ordinary meaning, is the best indicator of legislative intent. *Id.* "Statutory language that is unambiguous must be applied as written, without resorting to other aids of construction." *Taylor v. Pekin Insurance Co.*, 231 Ill.2d 390, 395 (2008), citing, *People v. Bywater*, 223 Ill.2d 477, 485 (2006). The Court must evaluate the statute

as a whole, "construing words and phrases in context to other relevant statutory provisions and not in isolation." *Murphy-Hylton v. Liberman Management Services, Inc.*, 2016 IL 120394, ¶ 25, citing, *Bowman v. Ottney*, 2015 IL 119000, ¶ 9. The Court should not render any language superfluous, giving each word, clause, and sentence of the statute a reasonable meaning. *Murphy-Hylton v. Liberman Management Services, Inc.*, 2016 IL 120394, ¶ 25, citing, *Chicago Teachers Union, Local No. 1 v. Board of Education of the City of Chicago*, 2012 IL 112566, ¶ 15. "Additionally, the court may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another." *Id.*

In the case at bar, the Court must apply these rules of statutory construction to determine what elements must be pled, and proven, in order to prevail on a claim under Section 20 of the Act.

II. Prior to the Appellate Court's decision in the case at bar, the *Sardiga* Court's statutory interpretation of Section 20 of the Act was universally accepted.

In *Sardiga*, the Illinois Appellate Court, First District, was the first Illinois court to interpret the statutory language of Section 20 of the Act to determine the elements necessary to properly plead a cause of action. *Sardiga v. Northern Trust Co.*, 409 Ill.App.3d 56, 62 (1st Dist. 2011) ("The parties have not cited, nor have we been able to find, any Illinois case law interpreting the language of section 20.") The *Sardiga* court concluded that it was facing an issue of statutory interpretation, requiring it to ascertain and give effect to the intent of the legislature. *Id.* at 61. The *Sardiga* court concluded that the language of Section 20 of the Act was unambiguous, thus requiring it to "apply that

language as written and without resort to other aids of statutory construction." *Id.* at 61; citing, *Taylor*, 231 Ill.2d at 395.

The *Sardiga* court held that:

> [I]n order to sustain a cause of action under the Act, a plaintiff must establish that (1) he refused to participate in an activity that would result in a violation of a state or federal law, rule, or regulation and (2) his employer retaliated against him because of that refusal.

Sardiga, 409 Ill.App.3d at 61. The court explained:

> "Refusing to participate" means exactly what it says: a plaintiff who participates in an activity that would result in a violation of a state or federal law, rule or regulation cannot claim recourse under the Act. 740 ILCS 174/20 (West 2004). Instead, the plaintiff must actually refuse to participate.

Id. at 62. The *Sardiga* decision identified the two (2) elements that a plaintiff must plead in order to state a cause of action under Section 20 of the Act.

The Plaintiff has not found any other decision in which an Illinois court (or Federal court interpreting Illinois law) engaged in a statutory interpretation of Section 20 of the Act. Following *Sardiga*, and prior to the decision in the case at bar, the *Sardiga* Court's statutory interpretation of Section 20 of the Act was universally accepted. Contrary to the Appellate Court's ruling here, other Illinois Appellate courts (from the First, Second, and Fourth Districts) held that only the two elements enunciated in *Sardiga* are necessary to properly plead a cause of action under Section 20 of the Act. The First District of the Illinois Appellate Court has consistently followed and quoted *Sardiga*. See, *Corah v. Bruss Company*, 2017 IL App (1st) 161030 ¶ 15; *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, ¶ 48; *Lucas v. County of Cook*, 2013 IL App (1st) 113052, ¶ 25. The Second District of the Illinois Appellate Court has followed and quoted *Sardiga*. See, *Collins v. Bartlett Park Dist.*, 2013 IL App (2d) 130006, ¶ 27 ("The Appellate Court, First

District, in a case directly on point, recently held that the language of section 20 is unambiguous and that, to state a claim, a "plaintiff must actually refuse to participate" in an activity that would violate a law or regulation."); *Money Management, Inc. v. Thomas*, 2017 IL App (2d) 160333-U; *Teschky v. Buschman Residential Management, LLC*, 2012 IL App (2d) 110880-U. The Fourth District of the Illinois Appellate Court followed *Sardiga*. *Sweeney v. City of Decatur*, 2017 IL App (4th) 160492.

When faced with the task of determining whether the plaintiff has properly pled and established a cause of action under Section 20 of the Act, the Illinois Federal District Courts have consistently cited *Sardiga* as the authority for the proper interpretation of Illinois law. See, *Montoya v. Atkore International, Inc.*, 2018 WL 1156245, *4 (N.D. Ill. 2018); *Volling v. Antioch Rescue Squad*, 82 F.Supp.3d 797, 804 (N.D. Ill. 2015); *Pignato v. Givaudan Flavors Corp.*, 2013 WL 995157, *5 (N.D. Ill. 2013); *Baker v. Atlantic Pacific Lines*, 2013 WL 4401382, *7 (N.D. Ill. 2013); *Beers v. E.R. Wagner Mfg. Co.*, 2013 WL 1679403, *3 (N.D. Ill. 2013); *Nelson v. Levy Home Entertainment, LLC*, 2012 WL 403974, *8 (N.D. Ill. 2012); *Robinson v. Morgan Stanley, et al.*, 2011 WL 3876903, *7 (N.D. Ill.2011) (The Court specifically rejected the requirement that the employee establish that the employer request or demand that the employee engage in illegal conduct.).

Prior to the *Sardiga* decision, is the only time that the Seventh Circuit Court of Appeals addressed Section 20 of the Act. See, *Robinson v. Alter Barge Line, Inc.*, 513 F.3d 668 (7th Cir. 2008). The *Sardiga* court cited the Seventh Circuit's decision in *Robinson* in support of its analysis and holding. *Sardiga*, 409 Ill.App.3d at 63 ("The court explained that the plaintiff's claim under the Act failed because plaintiff failed to establish that he refused to participate in the illegal activity.").

Ironically, the Appellate Court in the case at bar cites and relies upon the *Sardiga* decision. (A14 ¶ 37.) In fact, the Appellate Court stated:

> [i]n order to sustain a cause of action under the Whistleblower Act, a plaintiff must establish (1) a refusal to participate in an activity that would result in a violation of a state or federal law, rule, or regulation and (2) the employer retaliated against the employee because of said refusal. *Id.*; *Sardiga v. Northern Trust Co.*, 409 Ill.App.3d 56, 61 (2011).

(A14 ¶ 37.) The Appellate Court, quoting *Sardiga* at length as its authority, specifically explained that "[t]his court has previously analyzed the language of the Act regarding 'refusal to participate' and concluded [quotation omitted]." (A15 ¶ 38.) Despite its proclamation that "we decline to depart from the court's prior holding in *Sardiga*," the Appellate Court's holding departs from *Sardiga* and adds the necessity of pleading a third element to sustain a cause of action under Section 20 of the Act. (A16 ¶ 39.) The Appellate Court's statutory interpretation of Section 20 of the Act is erroneous and is in conflict with *Sardiga* and the many decisions from both Illinois and federal courts.

III. In the case at bar, the Appellate Court erroneously departed from the generally accepted pleading requirements established in *Sardiga*.

In the case at bar, the Appellate Court held that in addition to the two (2) elements established in *Sardiga*, "in order to state a claim under [Section 20] of the Whistleblower Act, there **must be a request or demand by the employer that the employee engage in the illegal or unlawful conduct**." (Emphasis added.) (A16 ¶ 41.) The Appellate Court concluded:

> Even accepting the allegations in the second amended complaint as true and taking them in a light most favorable to plaintiff, **there is no allegation in the second amended complaint that defendant offered or demanded plaintiff's participation in the allegedly wrongful activity**.

> Plaintiff pleads that he was "intentionally excluded" and allowed "no input" into the decision to hire or retain the unqualified instructors. While plaintiff alleges he refused "to cover things up," "be quiet," and "look the other way," **there is no allegation the defendant asked, requested, or demanded such action.**

(Emphasis added.) (A15 ¶ 38.) The Appellate Court departed from the generally accepted pleading requirements established in *Sardiga*. If the Appellate Court's decision is allowed to stand, employees will be required to plead the following three (3) elements in order to state a cause of action under Section 20 of the Act:

1. the employer requested or demanded that the employee engage in illegal or unlawful conduct;

2. the employee refused to participate in an activity that would result in a violation of a state or federal law, rule, or regulation; and

3. the employer retaliated against the employee because of that refusal.

(A16 ¶ 41.) The Appellate Court's statutory interpretation of Section 20 of the Act is incorrect and is in conflict with the holdings of both Illinois and Federal courts interpreting Illinois law.

In addition to departing from the decision in *Sardiga*, the Appellate Court misinterpreted two other Illinois decisions in an effort to support its conclusion "regarding what is required to state a claim under the Whistleblower Act." (A16 ¶ 40.) First, the Appellate Court states:

> In *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 13887, this court determined an employee adequately alleged a violation of the Whistleblower Act, where the employer *asked* its employee to falsify patient records in violation of the Nurse Practice Act (225 ILCS 65/70-5 (West 2010)). *Young*, 2015 IL App (1st) 131887, ¶¶ 51-56 (employee alleged she was constructively discharged for her refusal to follow her supervisor's request to falsify medical records).

(A16 ¶ 40.) The *Young* court, citing *Sardiga*, stated that "[t]o prevail on a claim under section 20 of the Whistleblower Act, a plaintiff must establish that (1) she refused to participate in an activity that would result in a violation of a state or federal law, rule or regulation and (2) her employer retaliated against her because of her refusal." *Young*, 2015 IL App (1st) 131887, ¶ 48. Nowhere within the paragraphs referenced by the Appellate Court (¶¶ 51-56) did the *Young* court discuss, evaluate or conclude that there must be an element establishing that the employer requested or demanded that the employee engage in illegal or unlawful conduct. See, *Young*, 2015 IL App (1st) 131887, ¶¶ 51-56. Instead, the Appellate Court merely pulls a comment out of context as a basis to support its incorrect conclusion. See, *Young*, 2015 IL App (1st) 131887, ¶¶ 51-56; (A16 ¶ 40.)

Next, the Appellate Court states:

> In *Corah v. The Bruss Co.*, 2017 IL App (1st) 161030, we found plaintiff's whistleblower claim deficient, in part, because 'plaintiff acknowledged that defendant *never asked* plaintiff to misstate where [the individual's] injury occurred' in violation of the Workers' Compensation Act (820 ILCS 305/4(h) (West 2012)). (Emphasis added.) *Corah*, 2017 IL App (1st) 161030, ¶ 19.

(A16 ¶ 40.) The *Corah* court cited *Young* (which cited *Sardiga*) for the two elements necessary to establish a violation of Section 20 of the Act. *Corah*, 2017 IL App (1st) 161030, ¶ 15. Ultimately, the *Corah* court concluded that there was not a violation of the Act because the conduct that the employer asked the employee to engage in was found not to violate any law, rule or regulation. *Corah*, 2017 IL App (1st) 161030, ¶ 19. This is demonstrated when the *Corah* court criticized the plaintiff's sole reliance on *Young* (ironically, the only other case relied upon by the Appellate Court):

> Therefore, the [*Young*] court concluded that the practice the defendant asked the plaintiff to engage in was illegal. In the instant case, as stated above, defendant did not ask plaintiff to falsify the AIR but merely to include the technical cause of Albea's accident.
>
> * * *
>
> Accordingly, plaintiff fails to establish that defendant instructed plaintiff to engage in unlawful behavior or interfered with Albea's rights under the Workers' Compensation Act.

Corah, 2017 IL App (1st) 161030, ¶¶ 18-19. Much like the *Young* court, the *Corah* court never discussed, evaluated or concluded that there must be an element establishing that the employer requested or demanded that the employee engage in illegal or unlawful conduct.

Both the *Young* and *Corah* decisions are distinguishable; and fail to support the Appellate Court's inaccurate conclusion that "in order to state a claim under [Section 20] of the Whistleblower Act, there **must be a request or demand by the employer that the employee engage in the illegal or unlawful conduct**." (Emphasis added.) (A16 ¶ 41.)

IV. The purpose of the Illinois Whistleblower Act is defeated if the employee must allege (and ultimately prove) that the employer made an overt request or demand that the employee engage in illegal or unlawful conduct.

The purpose of the Illinois Whistleblower Act has been stated as follows:

> The Act protects employees who call attention in one of two specific ways to illegal activities carried out by their employer. It protects employees who either contact a government agency to report the activity or refuse to participate in that activity. An employee who does not perform either of the specifically enumerated actions under the Act cannot qualify for its protections.

Sardiga, 409 Ill.App.3d at 62; *Sweeney v. City of Decatur*, 2017 IL App (4th) 160492, ¶ 19. In the case at bar, the Appellate Court quoted this very purpose. (A14 ¶ 37.) As stated in the title, the Act intends to provide protection to **whistleblowers** -- "employees who call attention . . . to illegal activities carried out by their employer." *Sardiga*, 409 Ill.App.3d at

62; *Sweeney v. City of Decatur*, 2017 IL App (4th) 160492, ¶ 19. Without this protection, any employee who has knowledge of their employer's illegal or unlawful conduct would remain silent, thereby allowing the conduct to continue. And, the very purpose of the Act is eradicated.

In the case at bar, contrary to the cited purpose of the Act, the Appellate Court concluded that Section 20 of the Act required that the Plaintiff plead the additional element that "there must be a request or demand by the employer that the employee engage in the illegal or unlawful conduct." (A16 ¶ 41.) This unsupported interpretation of the Act could potentially eviscerate all future claims against employers for violation of Section 20 of the Act. Rarely, if ever, will an employee be able to plead, and ultimately prove, that an employer made a specific overt "request or demand" that the employee engage in illegal or unlawful conduct. Clearly, this was not the intent of the legislation, and is contrary to all prior precedence.

An overt "request or demand" is not required, because it is often the situation that the employer is unaware that the conduct is in violation of a State or federal law, rule, or regulation, prior to the employee "calling attention" to its illegality. Whistleblowers are often the individuals that discovery that the employer's conduct is illegal, and on occasion when the Whistleblower calls attention to the illegality of the conduct and refuses to participate in the conduct, an employer retaliates against the Whistleblower. On those occasions, the employer never made an overt "request or demand" that the Whistleblower engage in the illegal conduct, but nonetheless, the Whistleblower is the victim of retaliation for refusing to participate in the conduct after bringing it to the attention of the employer. This is what happened to the Plaintiff in the case at bar.

In the case at bar, the Plaintiff, as the Director of Medical Programs at Malcolm X College, was responsible for vetting potential instructors to ensure that the instructors assigned to various courses met the appropriate accreditation standards and had the correct qualification to teach their assigned courses and curriculum. (A21 ¶ 13.) Despite the fact that vetting instructors was part of the Plaintiff's job duties, he was intentionally excluded from the process of assigning an instructor to teach HeaPro 101 for the 2015 school year. (A21 ¶ 14.) Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, was the individual who selected and assigned the unqualified professor to teach HeaPro 101. (A23 ¶ 25.) There was no "request or demand" for the Plaintiff to participate in the assignment of the unqualified professor, the assignment was intentionally done behind his back. (A32 ¶ 72.)

When the Plaintiff became aware that an unqualified professor was teaching HeaPro 101, he made numerous complaints to his direct supervisors, in which he refused to support the decision to appoint the unqualified professor assigned to teach the students at Malcolm X College who were enrolled in class HeaPro 101, fearing that the following violations were occurring:

a. By appointing and maintaining an unqualified professor, the Defendant was in violation of their accrediting standards and requirements (and in violation of 20 U.S.C. § 1094(a)(21) and 20 U.S.C. § 1094(c)(3)(A)).

b. By appointing and maintaining an unqualified professor, the Defendant was in violation of Federal and State grant and financial aid programs requirements, including the Program Participation Agreement (and in violation of 20 U.S.C. § 1094(a)(21), 20 U.S.C. § 1094(c)(3)(A), and 34 C.F.R. § 668.14).

c. By appointing and maintaining an unqualified professor, the students did not receive the education that they paid for (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the nature of its educational program").

d. By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 did not meet the certification requirements for phlebotomists (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the employability of its graduates.")

e. By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 were defrauded by the City Colleges.[3]

(A32 ¶ 73.) The Plaintiff did not allege in his Complaint that the Defendant knew that appointing an unqualified professor was in violation of any of the above-listed laws. Dr. Christopher Robinson-Easley's motivation for appointing an unqualified instructor is unknown. In fact, it is likely that until the Plaintiff called attention to the improper appointment, the Defendant, including the Plaintiff's supervisors, did not know the instructor was unqualified or of the illegality of the appointment.

Following the Plaintiff's complaints, in which he refused to support or participate in the assignment of an unqualified professor, the Defendant retaliated against the Plaintiff by keeping him out of important meetings, discussions and decisions regarding programs that were under his responsibilities as Director of Medical Programs at Malcolm X College. (A23 ¶ 27.) The retaliation was so blatant that Dr. Munroe, President of Malcolm X College, instructed the Plaintiff to file an EEO Complaint against Dr. Christopher Robinson-Easley for retaliation in connection with Plaintiff's complaints about the

[3] "[S]ection 20 includes a party's refusal to participate in an activity that would result in a violation of Illinois common law." *Teschky v. Buschman Residential Management, LLC*, 2012 IL App (2d) 110880-U, ¶ 28.

assignment of an unqualified professor. (A24 ¶ 29.) The retaliation of the Plaintiff ultimately escalates to the termination of his employment. (A33 ¶ 76.)

Clearly, under *Sardiga*, the Plaintiff properly pled the required two elements. The Plaintiff plead that he "refused to participate in an activity that would result in a violation of a state or federal law, rule or regulation. . .." *Sardiga*, 409 Ill.App.3d at 657. As the *Sardiga* Court explained:

> "Refusing to participate" means exactly what it says: a plaintiff who participates in an activity that would result in a violation of a state or federal law, rule or regulation cannot claim recourse under the Act. 740 ILCS 174/20 (West 2004). Instead, the plaintiff must actually refuse to participate.

Id. at 62. The Plaintiff did not participate in the assignment and maintenance of the unqualified professor, instead he actually refused to participate. The Plaintiff's refusal to participate was in the form of continued protests and complaints regarding the unqualified professor and how said assignment violated and continued to violate Federal and or State law, rules and regulations, and that he could not and would not participate in the questionable and improper activities. (A33 ¶¶ 74-75.) Short of leaving his employment, there is no other way that the Plaintiff could demonstrate that he was refusing to participate.

The Plaintiff pled that "his employer retaliated against him because of that refusal." *Sardiga*, 409 Ill.App.3d at 657. Under Section 20 of the Act, retaliation does not have to be in the form of the termination of employment. 740 ILCS 174/20; see also, 740 ILCS 174/30 ("If an employer takes any action against an employee in violation of Section 15 or 20, the employee may bring a civil action against the employer for all relief necessary to make the employee whole. . ..") The Defendant's retaliation of the Plaintiff started immediately after his whistleblowing, in the form of keeping him out of important

meetings, discussions and decisions regarding programs that were under his responsibilities as Director of Medical Programs at Malcolm X College. (A23 ¶ 27.) The Defendant's retaliatory actions were the result of the Plaintiff's failure to participate in the improper conduct. The Defendant's retaliatory conduct would likely have stopped had the Plaintiff agreed to participate in the assignment of the unqualified professor. However, the Plaintiff continued to refuse to participate, through ongoing complaints and protests and refusing to remain quiet about the assignment. (A33 ¶¶ 74-75.) The Appellate Court acknowledged the Plaintiff's continued refusal to participate, "[w]hile plaintiff alleges he refused 'to cover things up,' 'be quiet,' and 'look the other way'. . .." (A15 ¶ 38.) The Plaintiff's continued refusal to participate lead to the Defendant's retaliatory termination of his employment. (A33 ¶ 76.)

When the Plaintiff whistle blew on the Defendant's improper and illegal assignment of an unqualified professor, and refused to participate in said activity, the Defendant immediately began to retaliate against the Plaintiff, and when the Plaintiff continued to refuse to participate in the assignment, the Defendant retaliatorily terminated his employment. The purpose of Section 20 of the Act, was to protect the Plaintiff for blowing the whistle and refusing to participate in the illegal activity. The Appellate Court's decision requiring that the Defendant make an overt "request or demand" of the Plaintiff to engage in the illegal conduct defeats the purpose of the Act. See, *Murphy-Hylton v. Liberman Management Services, Inc.*, 2016 IL 120394, ¶ 25, citing, *Chicago Teachers Union, Local No. 1 v. Board of Education of the City of Chicago*, 2012 IL 112566, ¶ 15. ("Additionally, the court may consider the reason for the law, the problems sought to be remedied, the

purposes to be achieved, and the consequences of construing the statute one way or another.").

V. The Appellate Court's interpretation of Section 20 of the Act cannot be correct in light of the absurd consequences that stem from that interpretation.

The Appellate Court's statutory interpretation of Section 20 of the Act requires that "in order to state a claim under [Section 20] of the Whistleblower Act, there **must be a request or demand by the employer that the employee engage in the illegal or unlawful conduct**." (Emphasis added.) (A16 ¶ 41.) The Appellate Court's interpretation of the statutory language is that "refusing to participate" means that the employer must "request or demand" that the employee engage in illegal or unlawful conduct in order for the employee to be able to refuse to participate in said conduct. (A16 ¶ 41.) The Appellate Court's interpretation is based on the most extreme literal meaning of the word "refusal." See, *Sardiga*, 409 Ill.App.3d at 62 ("Black's Law Dictionary defines 'refusal' as '[t]he denial or rejection of something offered or demanded.' Black's Law Dictionary 1394 (9th ed. 2009).")[4] Under such an interpretation, all employers can avoid liability under Section 20 of the Act simply by not making an overt "request or demand" that the employee engage in illegal conduct.

Rarely, if ever, will an employee be able to specifically plead that an employer made an overt "request or demand" that the employer engage in illegal or unlawful conduct. The Appellate Court's interpretation would require the employee to plead the

[4] Although the *Sardiga* Court quoted Black's Law Dictionary's definition of "refusal," the Court did not apply the Appellate Court's literal meaning that an overt "request or demand" is required in order for there to be a refusal.

proverbial "smoking gun," a virtual impossibility. Employers typically do not verbalize their illegal or unlawful conduct; however, employees often face retaliatory treatment for refusing to participate in such conduct. The Appellate Court's interpretation of Section 20 of the Act cannot be correct in light of the absurd consequences that stem from that interpretation.

Illinois follows the principle that statutory language should not be construed to produce an absurd result.

> However, where a plain or literal reading of a statute produces absurd results, the literal reading should yield: "It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. *** If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity." [Citations omitted.] ("Statutes are to be construed in a manner that avoids absurd or unjust result."); [Citations omitted.] (when the literal construction of a statute would lead to consequences which the legislature could not have contemplated, the courts are not bound to that construction); [Citation omitted.] ("The absurd result principle in statutory interpretation provides an exception to the rule that a statute should be interpreted according to its plain meaning").

People v. Hanna, 207 Ill.2d 486, 498 (2003). The absurdity of the Appellate Court's interpretation of Section 20 of the Act is demonstrated in its reasoning:

> Even accepting the allegations in the second amended complaint as true and taking them in a light most favorable to plaintiff, there is no allegation in the second amended complaint that defendant offered or demanded plaintiff's participation in the allegedly wrongful activity. Plaintiff pleads that he was "intentionally excluded" and allowed "no input" into the decision to hire or retain the unqualified instructors. While plaintiff alleges he refused "to cover things up," "be quiet," and "look the other way," there is no allegation the defendant asked, requested, or demanded such action.

(A15 ¶ 38.) Clearly, the Appellate Court's interpretation of the statutory language "refusing to participate" inaccurately requires that the employee plead (and ultimately prove) that the employer made an overt "request or demand" to engage in illegal or

unlawful conduct. The absurd result principle in statutory interpretation requires that the Appellate Court's interpretation be rejected.

CONCLUSION

The Appellate Court's decision affirming the dismissal of Count II (Violation of the Illinois Whistleblower Act) of Plaintiff's Second Amended Complaint should be reversed. The case should be remanded for proceedings consistent with the Supreme Court's order. Plaintiff requests such other and further relief as the Court finds equitable and just.

Respectfully submitted,

s/ Brian R. Holman

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 26 pages.

s/ Brian R. Holman

Brian R. Holman

CERTIFICATE OF FILING AND SERVICE

Brian R. Holman, the undersigned attorney, certifies that on October 29, 2018, the foregoing Brief and Appendix of Plaintiff-Appellant was filed with the Supreme Court of Illinois, using the court's electronic filing system.

The undersigned further certifies that on October 29, 2018, he served each party to this appeal by emailing the Brief and Appendix of Plaintiff-Appellant directly to one of its attorneys at the email address specified below:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

s/ Brian R. Holman

Brian R. Holman

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2018 IL App (1st) 170067

FIRST DIVISION
April 16, 2018

No. 1-17-0067

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

KENRICK ROBERTS, Plaintiff-Appellant, v. BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT NO. 508 d/b/a City Colleges of Chicago, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 15 L 9430 Honorable James Snyder, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court, with opinion.
Presiding Justice Pierce and Justice Mikva concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff-appellant, Kenrick Roberts, filed this action against defendant-appellee, Board of Trustees Community College District No. 508 d/b/a City Colleges of Chicago, alleging causes of action for common law retaliatory discharge, violations of the Whistleblower Act (740 ILCS 174/20 (West 2016)), and wrongful termination. After engaging in motion practice, the circuit court dismissed the retaliatory discharge claim and whistleblower claim with prejudice.

¶ 2 On appeal, plaintiff contends the circuit court erred in dismissing those two counts. He contends his claim for retaliatory discharge successfully alleges a violation of Illinois public

policy. He also claims the second amended complaint properly alleges he refused to participate in defendant's unlawful conduct so as to fall within the protection of the Whistleblower Act.

¶ 3 For the reasons stated more fully below, we reverse the dismissal of plaintiff's retaliatory discharge claim but affirm the dismissal of his claim brought under the Whistleblower Act.

¶ 4 JURISDICTION

¶ 5 On October 25, 2016, the circuit court dismissed with prejudice count I (retaliatory discharge) and count II (Whistleblower Act) of plaintiff's second amended complaint. According to the record, plaintiff made an oral motion for Illinois Supreme Court Rule 304(a) language, which the circuit court denied. Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). On November 22, 2016, the plaintiff filed a motion to reconsider the denial of Rule 304(a) language. On December 15, 2016, the circuit court granted the motion to reconsider. In granting the motion, the circuit court made an express finding under Rule 304(a) that there was no just reason to delay the appeal of the October 25 dismissal of counts I and II. Plaintiff filed his notice of appeal on January 5, 2017. Accordingly, this court has jurisdiction over this matter pursuant to article VI, section 6 of the Illinois Constitution and Illinois Supreme Court Rules 301 and 304(a). Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 304(a) (eff. Mar. 8, 2016).

¶ 6 BACKGROUND

¶ 7 In March 2013, plaintiff began working for the defendant as the clinical coordinator of the physician assistant program at Malcolm X College (Malcolm X). In June 2014, plaintiff was promoted to the position of program director of the physician assistant program.[1] In November 2014, plaintiff was promoted to the position of director of medical programs.

[1]Malcolm X College is a community college located in the City of Chicago and is operated by defendant.

¶ 8 As the director of medical programs, plaintiff reported directly to and worked closely with Dr. Micah Young, the dean of health sciences and career programs at Malcolm X and Dr. Mario De La Haye, the associate dean of health sciences and career programs at Malcolm X. As part of his job duties and responsibilities as the director of medical programs, plaintiff was responsible for vetting potential instructors for teaching various courses and curriculum. This responsibility included ensuring instructors assigned to teach various courses, including but not limited to HeaPro 101, met the appropriate accreditation standards and had the correct qualifications to teach the assigned course and curriculum.

¶ 9 HeaPro 101 includes the instruction of phlebotomy[2] and electrocardiograms (EKG). The National Accrediting Agency for Clinical Laboratory Sciences (NAACLS) states that in order for a course or curriculum to be accredited and approved for phlebotomy, the class must have qualified faculty. Under NAACLS, in order to be qualified to teach phlebotomy within the phlebotomy or health care basic certificate program, the faculty needs to be a certified professional in that field, must demonstrate knowledge and proficiency in that field, and must demonstrate the ability to teach effectively at the appropriate level. A professor can be certified in phlebotomy by the National Phlebotomy Association or through the American Society of Clinical Pathologists.

¶ 10 On or about January 15, 2015, plaintiff alleges that he became aware of complaints that the instructor assigned to teach HeaPro 101 was unqualified to teach the course and curriculum. As a result of the complaints, plaintiff met with the HeaPro 101 instructor and questioned her qualifications to teach HeaPro 101. The instructor informed plaintiff that she had never taught phlebotomy before, she was unfamiliar with the requirements and certifications necessary to become a phlebotomist, phlebotomy was not her area of expertise, and she did not have any

[2]Phlebotomy is the practice of drawing blood from a patient for clinical testing.

certifications in phlebotomy. After meeting with the instructor, plaintiff found her unqualified to teach HeaPro 101.

¶ 11 On or about January 15, 2015, plaintiff sent an e-mail to Dr. Young and Dr. De La Haye complaining about the unqualified instructor. The e-mail stated:

> "In compliance with the City Colleges of Chicago policy and the College of Health Science credentialing standards and requirements it is my responsibility as Program Director of HeaPro 101 to review, evaluate and approve the recommendation of each faculty member that is approved to teach in the program which I am director. Taking into consideration I had no input into the department decision to appoint a nurse to teach HeaPro 101 without my review of the credentials and necessary certifications and licenses put our programs and students at risk. Please note this is a breach of the standards that were developed to ensure that the students obtain the best outcomes moving forward with their education in the medical field. Please note I am very concerned about the direction in which we are traveling and wish to address this matter."

After receiving the e-mail from plaintiff, Dr. Young sent an e-mail to the president and provost of Malcolm X College stating his concerns about the unqualified instructor and asked how it should be addressed.

¶ 12 Following his January 15, 2015 e-mail, plaintiff made verbal complaints to Dr. Anthony Munroe, president of Malcolm X College, regarding the appointment of an unqualified professor to teach HeaPro 101. He informed Dr. Munroe that he had been intentionally excluded from the hiring process of the unqualified instructor and he refused to support the assignment. On February 4, 2015, without prior notice, Dr. Young was unexpectedly terminated from his

position with defendant. On February 5, 2015, Dr. De La Haye was unexpectedly placed on paid administrative leave. Dr. De La Haye remained on leave until his termination on April 20, 2015.

¶ 13 On February 25, 2015, plaintiff sent an e-mail to the president, vice president, and associate provost again complaining about the unqualified instructor assigned to teach HeaPro 101. In addition to what plaintiff had previously learned from his interview with the instructor, plaintiff had learned that the instructor had abandoned the class. Plaintiff found out another individual was assigned to complete instruction in the course, but this individual was not properly certified to teach EKG.

¶ 14 Upon receipt of plaintiff's February 25, 2015, e-mail, Dr. Christopher Robinson-Easley, vice president of Malcolm X College, requested that plaintiff meet with her regarding the complaints in the e-mail. After receiving the request from Dr. Robinson-Easley, plaintiff sent an e-mail to Aaron Allen, executive director of labor and employee relations. Plaintiff told Allen that he felt uncomfortable about Dr. Robinson-Easley's request considering his complaints regarding the instructor. Dr. Robinson-Easley was the individual who selected and assigned the unqualified instructor to HeaPro 101. At the meeting, plaintiff found Dr. Robinson-Easley upset about his complaints and unwilling to address his concerns.

¶ 15 Plaintiff continued to complain and question the appointment of the unqualified instructor and the college's failure to address the situation to Dr. Munroe. Following the meeting with Dr. Robinson-Easley, plaintiff was excluded from important meetings, decisions, and discussions regarding programs that were under his responsibilities as director of medical programs.

¶ 16 On June 15, 2015, Roy Walker, the associate dean of health sciences and career programs at Malcolm X College, informed plaintiff that Dr. Robinson-Easley "has an axe to grind with you" because of the HeaPro 101 complaints. On June 28, 2015, Dr. Munroe instructed plaintiff to file an equal employment opportunity complaint against Dr. Robinson-Easley for retaliation in

connection with plaintiff's complaints. On August 7, 2015, plaintiff was advised that he was terminated from his position as director of medical programs at Malcolm X College.

¶ 17 Plaintiff filed his original complaint on September 15, 2015. Plaintiff brought three causes of action: retaliatory discharge, violation of the Whistleblower Act, and wrongful termination. Defendant brought a motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code). 735 ILCS 5/2-619.1 (West 2016). The circuit court granted the motion with respect to the retaliatory discharge claim and whistleblower claim but granted plaintiff an opportunity to replead. On February 24, 2016, plaintiff filed his amended complaint containing the same three counts. Defendant filed another section 2-619.1 motion to dismiss, and the circuit court dismissed the same two counts, again with leave to replead.

¶ 18 A second amended complaint alleging the same causes of action as the prior complaints was filed on June 27, 2016. This time defendant moved to dismiss the retaliatory discharge claim and whistleblower claim pursuant to section 2-615(a) of the Code. *Id.* § 2-615(a). On October 25, 2016, the circuit court granted the motion with prejudice. At the time, plaintiff made an oral motion for the inclusion of Rule 304(a) language, but this request was denied. Plaintiff moved to reconsider the denial of Rule 304(a) language, and on December 15, 2016, the circuit court granted plaintiff's motion to reconsider. The circuit court then entered an order finding no just reason to delay the appeal. Plaintiff timely filed a notice of appeal. The wrongful termination claim remains pending before the circuit court and is not before us.

¶ 19 ANALYSIS

¶ 20 On appeal, plaintiff argues that the circuit court erred in dismissing his common law retaliatory discharge claim and his whistleblower claim. Both counts are before us after being dismissed pursuant to section 2-615(a) of the Code. *Id.*

¶ 21 A motion brought pursuant to section 2-615 tests the legal sufficiency of the complaint based on defects apparent on its face. *Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 15. A section 2-615 motion presents the question of whether the facts alleged in the complaint, viewed in a light most favorable to the plaintiff and taking all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true, are sufficient to state a cause of action upon which relief can be granted. *Id.* ¶ 16. "[A] cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). In ruling on a section 2-615 motion, the court considers only (1) those facts apparent on the face of the pleadings, (2) matters subject to judicial notice, and (3) judicial admissions in the record. *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385 (2005). We review the grant of a section 2-615 motion *de novo*. *Doe-3*, 2012 IL 112479, ¶ 15. Under this standard of review, we are not bound by the circuit court's reasoning or decision. See *State Automobile Mutual Insurance Co. v. Habitat Construction Co.*, 377 Ill. App. 3d 281, 291 (2007).

¶ 22 Illinois follows the at-will employment rule, which means "a noncontracted employee is one who serves at the employer's will, and the employer may discharge such an employee for any reason or no reason." *Zimmerman v. Buchheit of Sparta, Inc.*, 164 Ill. 2d 29, 32 (1994). Illinois recognizes an exception to the general at-will employment rule when the discharge violates a clear mandate of public policy. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 501 (2009). This exception to the general rule acknowledges that under the common law "parties to a contract may not incorporate in it rights and obligations which are clearly injurious to the public." *Palmateer v. International Harvester Co.*, 85 Ill. 2d 124, 129 (1981). This exception

represents the common law cause of action known as retaliatory discharge. *Fellhauer v. City of Geneva*, 142 Ill. 2d 495, 505 (1991).

¶ 23 In order to state a cause of action for retaliatory discharge, an employee must allege (1) the employer discharged the employee, (2) in retaliation for the employee's activities, and (3) the discharge violates a clear mandate of public policy. *Id.* The Illinois Supreme Court has continuously cautioned the tort of retaliatory discharge is narrow in scope and the at-will employment rule remains the law of Illinois. *Turner*, 233 Ill. 2d at 501. This tort seeks to achieve "a proper balance *** among the employer's interest in operating a business efficiently and profitably, the employee's interest in earning a livelihood, and society's interest in seeing its public policies carried out." *Palmateer*, 85 Ill. 2d at 129.

¶ 24 Before this court, the only issue concerning plaintiff's retaliatory discharge claim is whether it states a violation of a clear mandate of Illinois public policy. The existence and ascertainment of public policy is a question for the court to decide. *Turner*, 233 Ill. 2d at 501-02. In *Palmateer*, the Illinois Supreme Court discussed the meaning of "clearly mandated public policy":

> "There is no precise definition of the term. In general, it can be said that public policy concerns what is right and just and what affects the citizens of the State collectively. It is to be found in the State's constitution and statutes and, when they are silent, in its judicial decisions. [Citation.] Although there is no precise line of demarcation dividing matters that are the subject of public policies from matters purely personal, a survey of cases in other States involving retaliatory discharges shows that a matter must strike at the heart of a citizen's social rights, duties, and responsibilities before the tort will be allowed." *Palmateer*, 85 Ill. 2d at 130.

Our court recognizes the tort is meant to prevent employers from "effectively frustrat[ing] a significant public policy by using its power of dismissal in a coercive manner." *Fellhauer*, 142 Ill. 2d at 508. The purpose of the tort is "to deter employer conduct inconsistent with [the public] policy." *Id.* Because the tort is concerned with the protection and enforcement of public policy, a complaining party "must only show that the conduct complained of contravenes a clearly mandated public policy, not necessarily a law." *Stebbings v. University of Chicago*, 312 Ill. App. 3d 360, 369 (2000).

¶ 25 In the case before us, plaintiff's position at Malcolm X required him to ensure instructors in classes like HeaPro 101 were qualified to teach the course and curriculum. Plaintiff alleges that despite his position and responsibilities, Dr. Robinson-Easley appointed unqualified individuals to teach HeaPro 101 without consulting with plaintiff. After a meeting with the phlebotomy instructor of HeaPro 101, plaintiff learned she had never taught phlebotomy, was unfamiliar with the requirements and certifications necessary to become a phlebotomist, phlebotomy was not her area of expertise, and she did not have any certifications in phlebotomy. Plaintiff concluded the instructor was unqualified to teach HeaPro 101.

¶ 26 In an e-mail to several higher ranking school officials, including Dr. Robinson-Easley, plaintiff expressed concern the appointments jeopardized the enrolled students' ability to obtain the educational benefits HeaPro 101 was designed to provide. When this instructor abandoned HeaPro 101, another unqualified instructor was put in place. This new instructor was also unqualified and not properly certified in EKG.

¶ 27 When plaintiff complained about the assignment of the unqualified instructors, he was terminated. Plaintiff then brought this suit containing a claim for retaliatory discharge. Plaintiff alleges his discharge for complaining about the unqualified instructors violated a specific public

policy: "the right to obtain the benefits of a post-secondary education through federal and state funded programs."

¶ 28 In support of his argument, plaintiff cites to Title IV of the Higher Education Act of 1965 (20 U.S.C §§ 1070-1099d (2012)), which establishes various loan and grant programs to assist students in obtaining a postsecondary education at places like Malcolm X. The funds must be used at eligible institutions. In order to be an eligible institution, defendant must sign and comply with a program participation agreement (PPA). The PPA requires defendant to "meet the requirements established by *** accrediting agencies or associations" (*id.* § 1094(a)(21)) and provide accurate information to these accrediting agencies. Plaintiff's complaint alleges defendant breached the PPA when it asserted to the accrediting agencies that HeaPro 101 instructors were properly qualified. Plaintiff also cites to section 1094(c)(3)(A), which subjects any eligible institution to suspension or termination if it has engaged "in substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates." *Id.* § 1094(c)(3)(A).

¶ 29 While not cited to by the plaintiff, we take judicial notice of the Higher Education Loan Act (Act) (110 ILCS 945/0.01 *et seq.* (West 2016)). See *Cruz v. Puerto Rican Society*, 154 Ill. App. 3d 72, 75 (1987) (reviewing courts may take judicial notice of statutes of this state). Section 2 ("Declaration of Purpose") of the Act states:

> "It is declared that for the benefit of the people of the State of Illinois, the conduct and increase of their commerce, the protection and enhancement of their welfare, the development of continued prosperity and the improvement of their health and living conditions, *it is essential that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities and skills*; that to achieve these ends it is of the utmost importance that

> students attending institutions of higher education located in Illinois have reasonable alternatives to enhance their financial access to such institutions; *that reasonable financial access to institutions of higher education will assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities and skills*; that it is the purpose of this Act to provide a measure of assistance and an alternative method to enable students and the families of students attending institutions of higher education located in Illinois to appropriately and prudently finance the cost or a portion of the cost of such higher education; and that it is the intent of this Act to supplement federal guaranteed higher education loan programs, other student loan programs, and grant or scholarship programs to provide the needed additional options for the financing of a student's higher education in execution of the public policy set forth above." (Emphases added.) 110 ILCS 945/2 (West 2016).

Our General Assembly has concluded the purpose of providing public funds for higher education is to provide the fullest opportunity for recipients to learn and develop their "intellectual and mental capacities and skills." *Id.* Based on the above, it is obvious to this court the purpose of establishing both state and federal loan programs is to ensure individuals without the private means of paying for a college education are given access to funds to better develop themselves intellectually so as to provide a greater contribution to our state and country.

¶ 30 This is a case of first impression in this State. While the tort of retaliatory discharge is well established in our jurisprudence, none of the cases cited by the parties or uncovered in the court's own research shows this claim has been brought in the circumstances presented in this matter. Courts in this state have limited the tort's application. For most of its history, the tort was limited to (1) when the discharge stems from asserting a worker's compensation claim (*Kelsay v.*

Motorola, Inc., 74 Ill. 2d 172 (1978)) or (2) where the discharge is for certain activities referred to as "whistle-blowing" (*Palmateer*, 85 Ill. 2d 124 (1981)). Where a matter involves only a private and individual grievance, our courts have consistently refused to expand the tort of retaliatory discharge. See *Geary v. Telular Corp.*, 341 Ill. App. 3d 694, 701 (2003) (collecting cases where Illinois courts have refused to expand the tort of retaliatory discharge).

¶ 31 On review, the question we are asked to answer "is whether the provisions 'enunciate a public policy that plainly covers the situation to which the plaintiff objects.' " *Carty v. The Suter Co.*, 371 Ill. App. 3d 784, 789 (2007) (quoting *Stebbings*, 312 Ill. App. 3d at 367). We conclude the public policy behind the federal Higher Education Act of 1965 and Illinois's Higher Education Loan Act would be seriously undermined if defendant is allowed to act in the manner alleged in plaintiff's complaint. The above-cited statutes demonstrate that in accepting public money, an institution of higher education should be able to assist those attending in "achieving the required levels of learning and development of their intellectual and mental capacities and skills." 110 ILCS 945/2 (West 2016).

¶ 32 Malcolm X is a public institution of higher learning whose mission and role in society is not to turn a profit but to educate and pass along knowledge to those students enrolled on its campus. In order to receive the benefits from attending classes at Malcolm X, many of its students take out loans under the above state and federal programs in order to subsidize, if not entirely fund, their tuition payments. It is axiomatic that in order to accomplish the mission of educating young men and women, defendant must staff its classes with competent individuals who actually possess the knowledge listed in the course syllabus. If defendant accepts loan money but uses it to hire incompetent and unqualified individuals who cannot properly instruct students who are enrolled in classes like HeaPro 101, defendant has essentially defrauded both the student and the taxpayer. The intent behind both the state and federal loan programs would

be thwarted because those receiving incompetent instruction would be unable to "develop their intellectual and mental capacities and skills." *Id.* The benefit to the State would be nil. This is more than a personal matter but concerns "what is right and just and what affects the citizens of the State collectively." *Palmateer*, 85 Ill. 2d at 130.

¶ 33 Defendant argues that Illinois lacks a clearly mandated public policy regarding the right to obtain public financial aid for a postsecondary education. This argument is disingenuous. There would be no point to enacting either a federal or state statute providing for public financing (through student loans) of higher education if the government did not want its citizens to utilize it. Simply put, if our government did not think providing all citizens with access to funds for higher education was a good idea, it would not have enacted the statutes in the first place.

¶ 34 In making its argument, defendant cites solely to *Turner*, 233 Ill. 2d 494, a recent Illinois Supreme Court case. The plaintiff in *Turner* alleged that he was fired from his position as a licensed respiratory therapist after he informed a surveyor from the Joint Commission on Accreditation of Healthcare Organizations (Joint Commission) that his hospital's respiratory department did not conduct "immediate charting" after a patient had been seen in violation of the Joint Commission standard. *Id.* at 497-98. He alleged his discharge for making this report to the Joint Commission " 'violated public policy that encourages employees to report actions that jeopardize patient health and safety.' " *Id.* at 498.

¶ 35 In rejecting the plaintiff's claim, the court concluded plaintiff's actions of informing the surveyor of the hospital's charting practice fell short of the " 'supreme court's public-policy threshold articulated in *Palmateer*.' " *Id.* at 506. The court found that neither Joint Commission standards nor section 3 of the Medical Patient Rights Act (410 ILCS 50/3 (West 2006)) established a clear public policy that plaintiff's discharge violated. *Turner*, 233 Ill. 2d at 505-06.

¶ 36 We find *Turner* to be distinguishable from the current case before us. Unlike the statutes in *Turner*, this case does present a clear statutory scheme which defendant's alleged actions sought to frustrate by terminating plaintiff. Both Illinois and the federal government have set up programs to help citizens attend schools of higher education so that those individuals may gain knowledge and better contribute to society. 20 U.S.C § 1070 *et seq.* (2002); 110 ILCS 945/2 (West 2016). This policy is effectively frustrated when institutions of higher learning terminate those individuals charged with ensuring its instructors have the requisite knowledge to pass onto students. We find plaintiff's complaint demonstrates a clear mandate of public policy and reverse the dismissal of plaintiff's retaliatory discharge count.

¶ 37 In his second issue, plaintiff argues the circuit court erred in dismissing his Whistleblower Act claim. The Whistleblower Act provides: "An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation ***." 740 ILCS 174/20 (West 2016). In order to sustain a cause of action under the Whistleblower Act, a plaintiff must establish (1) a refusal to participate in an activity that would result in a violation of a state or federal law, rule, or regulation and (2) the employer retaliated against the employee because of said refusal. *Id.*; *Sardiga v. Northern Trust Co.*, 409 Ill. App. 3d 56, 61 (2011). Our courts have recognized the Whistleblower Act extends protection to "employees who call attention in one of two specific ways to illegal activities carried out by their employer. It protects employees who either contact a government agency to report the activity or refuse to participate in that activity." *Sardiga*, 409 Ill. App. 3d at 62.

¶ 38 Before us, plaintiff argues that the second amended complaint sufficiently alleges a "refusal to participate."[3] This court has previously analyzed the language of the Act regarding "refusal to participate" and concluded:

> " 'Refusing to participate' means exactly what it says: a plaintiff who participates in an activity that would result in a violation of a state or federal law, rule, or regulation cannot claim recourse under the Act. 740 ILCS 174/20 (West 2004). Instead, the plaintiff must actually refuse to participate. Black's Law Dictionary defines *'refusal' as '[t]he denial or rejection of something offered or demanded.'* Black's Law Dictionary 1394 (9th ed. 2009). Indeed, the very title of section 20, 'Retaliation for certain refusals prohibited,' suggests that not every refusal qualifies for protection under the Act. 740 ILCS 174/20 (West 2004). Furthermore, the Act protects employees who complain to a government agency about an activity that the employee reasonably believes constitutes a violation of a state or federal law, rule, or regulation. 740 ILCS 174/15 (West 2004). Thus, 'refusing' means refusing; it does not mean 'complaining' or 'questioning ***.' " (Emphasis added.) *Id.*

Even accepting the allegations in the second amended complaint as true and taking them in a light most favorable to plaintiff, there is no allegation in the second amended complaint that defendant offered or demanded plaintiff's participation in the allegedly wrongful activity. Plaintiff pleads that he was "intentionally excluded" and allowed "no input" into the decision to hire or retain the unqualified instructors. While plaintiff alleges he refused "to cover things up," "be quiet," and "look the other way," there is no allegation the defendant asked, requested, or demanded such action.

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[3]There is no allegation in the second amended complaint that plaintiff contacted a governmental agency.

¶ 39 Plaintiff's brief does not mention *Sardiga* and instead argues that under the Act, "a plaintiff does not need to plead that the defendant specifically asked the plaintiff to perform an unlawful act." In support of this argument, plaintiff only cites to *Robinson v. Morgan Stanley*, No. 06 C 5158, 2011 WL 3876903 (N.D. Ill. Aug. 31, 2011). Federal cases interpreting Illinois law have no precedential value in this state (*Kelsay*, 74 Ill. 2d at 182), and we decline to depart from this court's prior holding in *Sardiga*.

¶ 40 Other Illinois courts have reached similar conclusions regarding what is required to state a claim under the Whistleblower Act. In *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, this court determined an employee adequately alleged a violation of the Whistleblower Act, where the employer *asked* its employee to falsify patient records in violation of the Nurse Practice Act (225 ILCS 65/70-5 (West 2010)). *Young*, 2015 IL App (1st) 131887, ¶¶ 51-56 (employee alleged she was constructively discharged for her refusal to follow her supervisor's request to falsify medical records). In *Corah v. The Bruss Co.*, 2017 IL App (1st) 161030, we found plaintiff's whistleblower claim deficient, in part, because "plaintiff acknowledged that defendant *never asked* plaintiff to misstate where [the individual]'s injury occurred" in violation of the Workers' Compensation Act (820 ILCS 305/4(h) (West 2012)). (Emphasis added.) *Corah*, 2017 IL App (1st) 161030, ¶ 19.

¶ 41 We adhere to the line of cases cited above that in order to state a claim under the Whistleblower Act, there must be a request or demand by the employer that the employee engage in the illegal or unlawful conduct. In this case, plaintiff fails to allege the defendant ever made a request or demand he approve or sanction the hiring of the allegedly unqualified instructor. Accordingly, he does not state a claim under the Whistleblower Act.[4]

[4]Because plaintiff failed to establish the first element of a whistleblower claim, we decline to address whether the allege activity of the defendant constitutes "unlawful activity" as required to meet the

¶ 42 CONCLUSION

¶ 43 For the reasons stated above, we reverse the dismissal of plaintiff's retaliatory discharge claim but affirm the dismissal of plaintiff's whistleblower claim.

¶ 44 Affirmed in part and reversed in part.

¶ 45 Cause remanded.

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second element.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

KENRICK ROBERTS, Plaintiff, v. BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508, d/b/a CITY COLLEGES OF CHICAGO, Defendant.	)	No. 2015 L 009430 JURY DEMANDED

SECOND AMENDED COMPLAINT

The Plaintiff, KENRICK ROBERTS, by and through his attorneys, HOLMAN & STEFANOWICZ, LLC, complains of the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508, d/b/a CITY COLLEGES OF CHICAGO, as follows:

Nature of Action

This is an action seeking monetary relief by KENRICK ROBERTS ("ROBERTS") against his former employer, the BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 ("BOARD") d/b/a CITY COLLEGES OF CHICAGO ("CITY COLLEGES"), for: (1) common law retaliatory discharge; (2) violation of the Illinois Whistleblower Act, 740 ILCS 174/20; and (3) wrongful termination.

Parties

1. The Plaintiff, ROBERTS, is a resident of the City of Chicago, in the County of Cook, in the State of Illinois. On August 7, 2015, ROBERTS was wrongfully terminated by the Defendant from his position as the Director of Medical Programs at Malcolm X College.

2. The Defendant, the BOARD, is a body politic and corporate established pursuant to the provisions of the Illinois Public Community College Act, 110 ILCS 805/1-1, *et seq*. The BOARD has jurisdiction over Community College District No. 508 whose territory is conterminous with the corporate boundaries of the City of Chicago, in the County of Cook, in the State of Illinois. The BOARD operates a community college system known as the CITY COLLEGES OF CHICAGO.

3. The CITY COLLEGES operates seven (7) colleges located within the City of Chicago, in the County of Cook, in the State of Illinois, one of which is Malcolm X College located at 1900 West Van Buren Street, Chicago, Illinois 60612.

Background Facts

4. In or about March, 2013, ROBERTS began working for the CITY COLLEGES as the Clinical Coordinator of the Physician's Assistance Program at Malcolm X College.

5. In or about June, 2014, ROBERTS was promoted to the position of Program Director of the Physician's Assistance Program at Malcolm X College.

6. In or about November, 2014, ROBERTS was promoted to the position of Director of Medical Programs at Malcolm X College.

7. As the Director of Medical Programs at Malcolm X College, ROBERTS reported directly to and worked closely with Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College and Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College.

8. On February 4, 2015, without prior notice ROBERTS' direct supervisor, Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College, was unexpectedly terminated.

9. On February 5, 2015, without prior notice, ROBERTS' direct supervisor, Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, was placed on paid administrative leave and remained on said leave until his termination on April 20, 2015.

10. During the entire time that ROBERTS held the position of Director of Medical Programs at Malcolm X College his performance was considered outstanding. Despite never receiving a formal written performance evaluation, which was allegedly required per policy, ROBERTS never received any negative comments regarding his performance.

11. Prior to his termination, ROBERTS was never advised and/or received any indication that there were any issues or concerns regarding his performance or conduct. ROBERTS never received a single reprimand or notice of there being a need for performance improvement and/or that he engaged in any type of improper conduct.

12. On August 7, 2015, ROBERTS was advised that he was terminated from his Director of Medical Programs position at Malcolm X College. ROBERTS was not provided a reason for his termination.

ROBERTS' Complaints that Lead to his Termination

13. As part of his job duties and responsibilities as the Director of Medical Programs at Malcolm X College, ROBERTS was responsible in vetting potential instructors for teaching various courses and curriculum and for ensuring that instructors assigned to teach various courses, including but not limited to, HeaPro 101, met the appropriate accreditation standards and had the correct qualifications to teach their assigned courses and curriculum.

14. Despite the fact that vetting instructors was part of ROBERTS' job duties and responsibilities, ROBERTS was intentionally excluded from the process of assigning an instructor to teach HeaPro 101 for the 2015 school year.

15. On or about January 15, 2015, ROBERTS became aware of complaints that the instructor assigned to teach HeaPro 101 was unqualified to teach said course and curriculum.

16. On or about January 15, 2015, ROBERTS investigated these complaints further and met with the HeaPro 101 instructor and questioned her qualifications to teach said course and curriculum.

17. The instructor for HeaPro 101 informed ROBERTS that she had never taught phlebotomy before; she was unfamiliar with the requirements and certifications necessary to become a phlebotomist, phlebotomy was not her area of expertise, and she did not have any certifications in phlebotomy. Following this meeting it became clear to ROBERTS that said instructor was unqualified to teach said course.

18. On or about January 15, 2015, ROBERTS sent an email to his direct supervisors Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College and Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, complaining about the faculty assignment of an unqualified professor.

19. ROBERTS' January 15, 2015 email states:

> In compliance with the City Colleges of Chicago policy and the College of Health Science credentialing standards and requirements it is my responsibility as Program Director of HeaPro 101 to review, evaluate and approve the recommendation of each faculty member that is approved to teach in a program which I am the director. Taking into consideration I had no input into the department decision to appoint a nurse to teach HeaPro 101without my review of the credentials and necessary certifications and licenses put our programs and students at risk. Please note this is a breach of the standards that were developed to ensure that the students obtain the best outcomes moving forward with their education in the medical field. Please note I am very concerned about the direction in which we are traveling and wish to address this matter.

20. Upon receipt of ROBERTS' January 15, 2015 email, Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College, sent an email to the President and Provost of Malcolm X College stating his concerns about the unqualified professor assigned to teach HeaPro 101, and questioned them how to address the issue.

21. Following his January 15, 2015 email, ROBERTS made verbal complaints to Dr. Anthony Munroe regarding the appointment of an unqualified professor to teach HeaPro 101. He informed Dr. Anthony Munroe that he was intentionally excluded from the selection process of this unqualified professor and that he refused to support the assignment of this unqualified professor.

22. On February 25, 2015, ROBERTS sent an email to the President, Vice President, and Associate Provost again complaining about the unqualified professor assigned to teach HeaPro 101. In addition to stating that the professor admitted never teaching phlebotomy before and not being familiar with the certification requirements for phlebotomists, ROBERTS stated that he learned from a student that the unqualified professor had abandoned her class (HeaPro 101) and another unqualified professor, who was not properly certified to teach the EKG portion of the course, was required to complete the remainder of the course. ROBERTS also complained

that he was excluded from the decisions in selecting these unqualified professors, despite this being one of his job duties and responsibilities as Director of Medical Programs at Malcom X College.

23. Upon receipt of ROBERTS' February 25, 2015 email, Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, requested that ROBERTS meet with her that day regarding his complaints contained in his email.

24. Upon receipt of Dr. Christopher Robinson-Easley's meeting request, ROBERTS sent an email to Aaron Allen, Executive Director of Labor & Employee Relations, stating that he wanted to document that he felt very uncomfortable about the meeting request considering his complaints regarding the unqualified professor assignment.

25. On February 25, 2015, ROBERTS met with Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, who was the individual who selected and assigned the unqualified professor to teach HeaPro 101. At the meeting, Dr. Christopher Robinson-Easley was very upset with ROBERTS in connection with his complaints about the assignment of the professor teaching HeaPro 101. Dr. Christopher Robinson-Easley expressed no interest in addressing the problem.

26. Following his February 25, 2015 complaints and meeting with Dr. Christopher Robinson-Easley, ROBERTS continued to complain and question the appointment of the unqualified professor assigned to teach HeaPro 101 and Malcom X College's failure to address and rectify the situation to Dr. Anthony Munroe.

27. Following his complaints and meeting with Dr. Christopher Robinson-Easley, ROBERTS was kept out of important meetings, discussions and decisions regarding programs that were under his responsibilities as Director of Medical Programs at Malcolm X College.

28. On or about June 15, 2015, Roy Walker, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, told ROBERTS that Dr. Christopher Robinson-Easley "has an axe to grind against you" because of ROBERTS' complaints about the assignment of an unqualified professor to teach HeaPro 101.

29. On or about June 28, 2015, Dr. Munroe, President of Malcolm X College, instructed ROBERTS to file an EEO Complaint against Dr. Christopher Robinson-Easley for retaliation in connection with ROBERTS' complaints about the assignment of an unqualified professor to teach HeaPro 101.

30. On June 28, 2015, ROBERTS completed and filed an Equal Opportunity Complaint Form with the CITY COLLEGES EEO Office claiming retaliation and hostile and intimidating work environment against Dr. Christopher Robinson-Easley, Vice President of Malcolm X College.

31. On August 7, 2015, ROBERTS was advised that he was terminated from his Director of Medical Programs position at Malcolm X College.

Defendant's appointment and maintenance of an unqualified professor violated Federal Statutes and Regulations and was a violation of clear mandate of public policy in Illinois

32. HeaPro 101 includes instruction of phlebotomy and EKG (electrocardiogram.)

33. The National Accrediting Agency for Clinical Laboratory Sciences ("NAACLS") states that in order for a course/curriculum to be accredited and approved for phlebotomy, it must have qualified faculty. Under the NAACLS, in order to be qualified to teach phlebotomy within the phlebotomy or health care basic certificate program, the faculty needs to be a certified

professional in that field; must demonstrate knowledge and proficiency in that field; and must demonstrate the ability to teach effectively at the appropriate level.

34. A professor can be certified in phlebotomy by the National Phlebotomy Association ("NPA") or through the American Society of Clinical Pathologists ("ASCP"). The NPA requires recertification on an annual basis and continuing education courses.

35. In order to instruct students regarding EKGs, a professor also needs to be certified, have a knowledge and proficiency in the field and can teach effectively at the appropriate level.

36. Best practice standards in program accreditation require the hiring of faculty who have the knowledge and training, including appropriate certifications, to instruct their students so that the students receive the appropriate instructional content to be able to obtain their appropriate certifications and/or to be able to practice in their related field. Students who successfully complete HeaPro 101 and pass their licensure and/or certification exam can seek employment at any licensed healthcare facility as a Certified Nursing Assistant (CNA), a Certified Patient Care Technician (PCA), a Certified Phlebotomy Technician and/or an EKG Technician.

37. The professor appointed to teach phlebotomy – without ROBERTS' input – was not qualified under the NAACLS, as she was not a certified professional in that field; she did not demonstrate the knowledge and proficiency of that field; and she did not demonstrate the ability to teach effectively at the appropriate level.

38. When the first professor who was unqualified to teach the phlebotomy section of HeaPro 101 abandoned her class, the Defendant replaced her with a professor who was unqualified to teach the EKG portion of the course, as he was not a certified professional in that

field; he did not demonstrate the knowledge and proficiency of that field; and he did not demonstrate the ability to teach effectively at the appropriate level.

39. The failure to appoint a qualified professor for HeaPro 101 endangered the students in their ability to receive the proper knowledge and instruction to become a CNA, PCA, Phlebotomist Technician and/or EKG Technician. Additionally, by appointing and maintaining an unqualified professor, the Defendant was in violation of Federal and State grant and financial aid programs requirements.

40. Under Title IV of the Higher Education Act of 1965 ("Title IV/HEA"), Congress established various student loan and grant programs, including the Federal Pell Grant Program ("Pell"), Federal Supplemental Educational Opportunity Grand ("FSEOG"), Federal Direct Stafford Loan Program ("Stafford"), Federal Direct Plus Loan Program ("PLUS"), and Federal Work Study ("FWS") to assist in making available the benefits of postsecondary education to eligible students in institutions of higher education, such as the City Colleges of Chicago. 20 U.S.C. §§ 1070-1099.

41. The majority of Defendant's students apply for and receive federal Title IV/HEA program assistance to pay for tuition and school related expenses.

42. In order for Defendant's students to apply for and obtain Title IV/HEA program assistance, Malcolm X must be an eligible institution and be permitted to participate in the programs by the United States Department of Education ("DOE"). 34 C.F.R. § 668.14(a)(1).

43. As a condition to allowing the students at Malcolm X to receive federal funding under Title IV/HEA, the Defendant was required to sign a Program Participation Agreement ("PPA"), whereby the Defendant agreed to comply with certain statutory, regulatory and

contractual requirements detailed in 20 U.S.C. § 1094 and supporting regulations, including 34 C.F.R. § 668.14.

44. By appointing and maintaining an unqualified professor, the Defendant was in violation of Federal and State grant and financial aid programs requirements, including the Program Participation Agreement (and in violation of 20 U.S.C. § 1094(a)(21), 20 U.S.C. § 1094(c)(3)(A), and 34 C.F.R. § 668.14).

45. The PPA requires that Defendant "will meet the requirements established by . . . accrediting agencies or associations. . . ." 20 U.S.C. § 1094(a)(21).

46. The Defendant's improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101 was in violation of the requirements established by the accrediting agencies.

47. By appointing and maintaining an unqualified professor, the Defendant was in violation of their accrediting standards and requirements (and in violation of 20 U.S.C. § 1094(a)(21) and 20 U.S.C. § 1094(c)(3)(A)).

48. The Defendant, by entering into the PPA, not only agreed to meet the requirements established by the nationally recognized accrediting agencies that accredit Malcolm X, but it agreed to provide accurate information to these agencies. 20 U.S.C. § 1094(c)(3)(A).

49. The Defendant provided inaccurate information to the accrediting agencies when it proclaimed that the professor was properly qualified to teach the students at Malcolm X College who were enrolled in class HeaPro 101.

50. Title IV/HEA also prohibits Malcolm X from engaging in "substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates." 20 U.S.C. § 1094(c)(3)(A).

51. By appointing and maintaining an unqualified professor, the students did not receive the education that they paid for (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the nature of its educational program").

52. By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 did not meet the certification requirements for phlebotomists (in violation of 20 U.S.C. § 1094(c)(3)(A) --"misrepresentation of the employability of its graduates.")

53. The DOE has the authority to enforce the PPA and possesses the ability to terminate Malcolm X from the Title IV/HEA program. 34 C.F.R. §§ 600.41(a)(1); 668.86.

54. The ability to obtain the benefits of a postsecondary education by Illinois students through the financial help of Federal and State funded programs is an Illinois public policy.

55. The improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101 violates a mandate of public policy in Illinois.

56. By appointing and maintaining an unqualified professor, the Defendant jeopardized the students that attend the City Colleges from obtaining federal funding under Title IV/HEA, and other State grant and financial aid programs.

57. The vast majority of the students that attend the City Colleges are only able to do so through the financial help of federal funding under Title IV/HEA.

58. If the DOE used its authority to enforce the Defendant's PPA and terminated the City Colleges from the Title IV/HEA program (34 C.F.R. §§ 600.41(a)(1); 668.86), thousands of Illinois students would lose the benefit of obtaining a postsecondary education.

COUNT I
COMMON LAW RETALIATORY DISCHARGE

59. The Plaintiff realleges and incorporates paragraphs 1 through 58 as if fully set forth herein.

60. On August 7, 2015, the Plaintiff's employer, the BOARD d/b/a CITY COLLEGES, terminated his employment as the Director of Medical Programs at Malcolm X College.

61. The Plaintiff's termination was a direct and proximate result of his complaints regarding the improper appointment of an unqualified professor to teach students at Malcolm X College, his complaint to Aaron Allen, the CITY COLLEGES Executive Director of Labor Relations, and his Equal Opportunity Complaint filed with the CITY COLLEGES' EEO office.

62. The Defendant's termination of the Plaintiff's employment violated a clear mandate of public policy in that the Plaintiff's complaints dealt with the improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101.

63. The professor appointed to teach phlebotomy – without ROBERTS' input – was not qualified under the NAACLS, as she was not a certified professional in that field; she did not demonstrate the knowledge and proficiency of that field; and she did not demonstrate the ability to teach effectively at the appropriate level.

64. When the first professor who was unqualified to teach the phlebotomy section of HeaPro 101 abandoned her class, the Defendant replaced her with a professor who was unqualified to teach the EKG portion of the course, as he was not a certified professional in that field; he did not demonstrate the knowledge and proficiency of that field; and he did not demonstrate the ability to teach effectively at the appropriate level.

65. By appointing and maintaining unqualified professors, the Defendant was in violation of Federal and State grant and financial aid programs requirements.

66. The ability to obtain the benefits of a postsecondary education by Illinois students through the financial help of Federal and State funded programs is an Illinois public policy, which was violated by the Defendant's improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101.

67. The Plaintiff complained about the improper appointment and maintenance of an unqualified professor fearing that the following violations were occurring:

a. By appointing and maintaining an unqualified professor, the Defendant was in violation of their accrediting standards and requirements (and in violation of 20 U.S.C. § 1094(a)(21) and 20 U.S.C. § 1094(c)(3)(A)).

b. By appointing and maintaining an unqualified professor, the Defendant was in violation of Federal and State grant and financial aid programs requirements, including the Program Participation Agreement (and in violation of 20 U.S.C. § 1094(a)(21), 20 U.S.C. § 1094(c)(3)(A), and 34 C.F.R. § 668.14).

c. By appointing and maintaining an unqualified professor, the students did not receive the education that they paid for (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the nature of its educational program").

d. By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 did not meet the certification requirements for phlebotomists (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the employability of its graduates.")

e. By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 were defrauded by the City Colleges.

68. Due to the Defendant's improper termination of the Plaintiff's employment, the Plaintiff suffered mental anguish, emotional distress, humiliation, emotional pain and suffering,

inconvenience, lost wages and benefits, damage to his reputation, and other consequential damages.

69. The actions of the Defendant were intentional, willful, malicious and showed deliberate indifference to the Plaintiff's rights.

WHEREFORE, the Plaintiff, KENRICK ROBERTS, demands judgment against the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 d/b/a CITY COLLEGES OF CHICAGO for damages in an amount necessary to fully and fairly compensate the Plaintiff for all of his losses that greatly exceeds the jurisdictional amounts of this Court, and such other relief as the Court deems just and proper.

COUNT II
VIOLATION OF THE ILLINOIS WHISTLEBLOWER ACT
740 ILCS 174/20

70. The Plaintiff realleges and incorporates paragraphs 1 through 58 as if fully set forth herein.

71. The Plaintiff, through his position as the Director of Medical Programs at Malcolm X College, became aware that the BOARD d/b/a CITY COLLEGES was committing numerous questionable activities, which the Plaintiff believed would result in a violation of a State or Federal law, rule, or regulation, by and through the improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101.

72. Despite the fact that as the Director of Medical Programs at Malcolm X College, the Plaintiff was responsible for vetting potential instructors for teaching various courses and curriculum and for ensuring that instructors assigned to teach various courses, including but not

limited to, HeaPro 101, met the appropriate accreditation standards and had the correct qualifications to teach their assigned courses and curriculum, the Plaintiff was intentionally excluded from the process of assigning an instructor to teach HeaPro 101 for the 2015 school year and his continued complaints regarding the unqualified professors were not addressed and the unqualified professors were permitted to continue to teach HeaPro 101.

73. When the Plaintiff became aware that an unqualified professor was teaching HeaPro 101, he made numerous complaints to his direct supervisors, Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College and Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, Dr. Anthony E. Munroe, the President of Malcolm X College, Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, Martin Kaplan, Associate Provost of Malcolm X College Aaron Allen, the CITY COLLEGES Executive Director of Labor Relations, in which he refused to support the decision to appoint the unqualified professor assigned to teach the students at Malcolm X College who were enrolled in class HeaPro 101, and as a result:

a. By appointing and maintaining an unqualified professor, the Defendant was in violation of their accrediting standards and requirements (and in violation of 20 U.S.C. § 1094(a)(21) and 20 U.S.C. § 1094(c)(3)(A)).

b. By appointing and maintaining an unqualified professor, the Defendant was in violation of Federal and State grant and financial aid programs requirements, including the Program Participation Agreement (and in violation of 20 U.S.C. § 1094(a)(21), 20 U.S.C. § 1094(c)(3)(A), and 34 C.F.R. § 668.14).

c. By appointing and maintaining an unqualified professor, the students did not receive the education that they paid for (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the nature of its educational program").

d. By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 did not meet the certification requirements

for phlebotomists (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the employability of its graduates.")

e. By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 were defrauded by the City Colleges.

74. In his complaints and refusals to participate and support Defendant's decision to appoint said professor without his knowledge, the Plaintiff explained that he was not involved in the selection of the professor for HeaPro 101, a class that was one of his responsibilities as the Director of Medical Programs at Malcolm X College, and that he could not and would not participate in the questionable and improper activities that the CITY COLLEGES were involved in and that this issue needed to be addressed immediately, and that he was concerned with the education that the students were receiving from the unqualified professor.

75. Despite the Plaintiff's continued protests and complaints regarding the unqualified professor and how said assignment violated and continued to violate Federal and/or State law, rules and regulations, the Defendant refused and allowed said improper conduct to continue.

76. As a direct and proximate result of the Plaintiff's complaints and refusal to participate in activities that would result in a violation of a State or Federal law, rule, or regulation, as described herein above, the Defendant retaliated against the Plaintiff in violation of the Illinois Whistleblower Act, 740 ILCS 174/20. The Defendant's retaliation against the Plaintiff resulted in the termination of the Plaintiff's employment as the Director of Medical Programs at Malcolm X College.

77. As a direct and proximate result of the Defendant's improper termination of the Plaintiff's employment, the Plaintiff suffered mental anguish, emotional distress, humiliation,

emotional pain and suffering, inconvenience, lost wages and benefits, damage to his reputation, and other consequential damages.

WHEREFORE, the Plaintiff, KENRICK ROBERTS, demands judgment against the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 d/b/a CITY COLLEGES OF CHICAGO, for all relief necessary to make the Plaintiff whole, including but not limited to the following:

(a) reinstatement with the same seniority status that the employee would have had, but for the violation, pursuant to 740 ILCS 174/30(1);

(b) back pay, with interest, pursuant to 740 ILCS 174/30(2); and

(c) compensation for any damages sustained as a result of the violation, including litigation costs, expert witness fees, and reasonable attorneys' fees, pursuant to 740 ILCS 174/30(3).

Plaintiff's damages substantially exceed the minimum jurisdictional amount of this Court.

COUNT III
WRONGFUL TERMINATION

78. The Plaintiff realleges and incorporates paragraphs 1 through 58 as if fully set forth herein.

79. Throughout Plaintiff's employment with the CITY COLLEGES, the CITY COLLEGES of Chicago Equal Opportunity Policy and Complaint Procedures states:

> **Prohibition Against Retaliation and Intimidation**
>
> Retaliation against and/or intimidation of employees, students, program participants, witnesses or any other person who make complaints or who cooperate in EEO investigations is strictly prohibited.
>
> Anyone who believes he or she is the victim of retaliation or intimidation for reporting discrimination or harassment or cooperating in an investigation should immediately contact the EEO Office.

> Any person who retaliates against a person in response to a report or cooperation in an investigation will be in violation of this Policy and will be subject to disciplinary action.

80. On or about June 28, 2015, Dr. Munroe, President of Malcolm X College, instructed ROBERTS to file an EEO Complaint against Dr. Christopher Robinson-Easley for retaliation in connection with ROBERTS' complaints about the assignment of an unqualified professor to teach HeaPro 101. On June 28, 2015, ROBERTS completed and filed an Equal Opportunity Complaint Form with the CITY COLLEGES EEO Office claiming retaliation and hostile and intimidating work environment against Dr. Christopher Robinson-Easley, Vice President of Malcolm X College.

81. On August 7, 2015, as a direct and proximate result of the Plaintiff's EEO Complaint filed with the CITY COLLEGES EEO Office claiming retaliation and hostile and intimidating work environment against Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, the Plaintiff's employer, the BOARD d/b/a CITY COLLEGES, terminated his employment as the Director of Medical Programs at Malcolm X College.

82. The Plaintiff's termination was in violation of the CITY COLLEGES of Chicago Equal Opportunity Policy and Complaint Procedures

83. Due to the Defendant's wrongful termination of the Plaintiff's employment, the Plaintiff suffered mental anguish, emotional distress, humiliation, emotional pain and suffering, inconvenience, lost wages and benefits, damage to his reputation, and other consequential damages.

84. The actions of the Defendant were intentional, willful, malicious and showed deliberate indifference to the Plaintiff's rights.

WHEREFORE, the Plaintiff, KENRICK ROBERTS, demands judgment against the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 d/b/a CITY COLLEGES OF CHICAGO for damages in an amount necessary to fully and fairly compensate the Plaintiff for all of his losses that greatly exceeds the jurisdictional amounts of this Court, and such other relief as the Court deems just and proper.

Respectfully submitted,
Plaintiff

s/ Brian R. Holman

By one of his attorneys

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