

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

Rockingham Superior Court  
Rockingham City Courthouse/PO Box 1258  
Kingston NH 03848-1258

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**SUMMONS IN A CIVIL ACTION  
FOR SERVICE**

Case Name: **Maureen McPadden v Walmart Stores, Inc., et al**  
Case Number: **218-2014-CV-01015**

Date Complaint Filed: September 15, 2014

A Complaint has been filed against Jenn Fonseca; Walmart Stores, Inc. in this Court. A copy of the Complaint is attached.

**The Court ORDERS that ON OR BEFORE:**

- November 01, 2014 Maureen McPadden shall have this Summons and the attached Complaint served upon Jenn Fonseca; Walmart Stores, Inc. by in hand or by leaving a copy at his/her abode, or by such other service as is allowed by law.
- November 22, 2014 Maureen McPadden shall file the return(s) of service with this Court. Failure to do so may result in this action being dismissed without further notice.
- 30 days after Defendant is served Jenn Fonseca; Walmart Stores, Inc. must file an Appearance and Answer or other responsive pleading form with this Court. A copy of the Appearance and Answer or other responsive pleading must be sent to the party listed below and any other party who has filed an Appearance in this matter.

**Notice to Jenn Fonseca, ~~Walmart Stores, Inc.~~** If you do not comply with these requirements you will be considered in default and the Court may issue orders that affect you without your input.

Send copies to:

Richard E. Fradette, ESQ

Beliveau Fradette & Gallant PA  
91 Bay Street  
PO Box 3150  
Manchester NH 03105-3150

BY ORDER OF THE COURT

September 17, 2014

Raymond W. Taylor  
Clerk of Court

(504)

RECEIVED SEP 15 2014

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

**MAUREEN MCPADDEN**

REDACTED

v.

**WALMART STORES, INC.**

270 Lafayette Road  
Seabrook, NH 03874

and

**JENN FONSECA**

Walmart Stores, Inc.  
270 Lafayette Road  
Seabrook, NH 03874

**COMPLAINT**

**I. INTRODUCTION**

This case is about the discrimination and retaliation by Walmart against Pharmacist Maureen McPadden because of: a) her serious medical condition; b) her good faith report that the operation of the Seabrook Walmart pharmacy was a threat to public safety in violation of regulations governing the practice of pharmacy; and c) her good faith report that the defendants violated her HIPAA and privacy rights when they publicized private protected health information related to her serious medical condition. Defendant Walmart also negligently trained and supervised the pharmacy staff that caused the public safety threat and violation of Pharmacist McPadden's right of privacy.

FACTS

At all times, Pharmacist McPadden acted to protect the privacy health, and safety of patients served by the Walmart Pharmacy where she was employed.

Because of her serious medical condition, her leave of absence for treatment, her report of public safety threat and regulatory violations, and her assertion of HIPAA and privacy rights as alleged herein, Pharmacist McPadden was terminated by Defendants on November 27, 2012 after 18 years of faithful service. As a direct and foreseeable consequence of Defendant's actions, Pharmacist McPadden has suffered economic and professional reputation damages, emotional distress, humiliation, embarrassment, lost wages past and future, lost benefits, costs and reasonable attorney fees. Pharmacist McPadden's claims for damages are more fully set forth below.

II. PARTIES

1. Pharmacist Maureen McPadden (hereinafter, Maureen) is a citizen of the State of New Hampshire and currently resides at REDACTED Portsmouth, New Hampshire 03801. At all times relevant herein, Maureen was employed by defendant Walmart as a pharmacist. At all times relevant herein, Maureen performed her duties as a pharmacist in a lawful and satisfactory manner.

2. Defendant Walmart, Inc. (hereinafter, Walmart) is a corporation with a pharmacy located in Seabrook, New Hampshire and headquartered in the State of Arkansas, with a corporate address at 702 S.W. 8<sup>th</sup> Street, Bentonville, Arkansas 72716. At all times relevant herein, Walmart employed Maureen as a pharmacist responsible for the practice of pharmacy at its store in Seabrook, New Hampshire. Walmart is subject

to the laws of New Hampshire as it relates to this employer/employee dispute and the laws, rules and regulations governing the safe practice of pharmacy in New Hampshire.

3. Defendant Jenn Fonseca (hereinafter, Fonseca) is a citizen of the State of New Hampshire and currently resides at Charter Street, Exeter, NH. Fonseca was hired by Walmart as a pharmacy technician at its store in Seabrook, New Hampshire on or about December 2011. At all times relevant herein, Walmart is vicariously liable for the acts of Fonseca.

### III. FACTS

4. Maureen began working for Walmart as a pharmacist on September 6, 1994. She was terminated on November 27, 2012. Her performance evaluations throughout her entire career with Walmart are satisfactory or better. The reason given for her termination was "Misconduct with Coachings" - she had lost her key to the pharmacy - is a pretext for the real unlawful reasons.

5. Between 2011 and 2012, 13 employees involved in the operation of the Seabrook pharmacy quit, transferred, or were fired. These positions were either filled by new inexperienced employees or left vacant. This constant turnover, understaffing, and inexperienced staff created a serious threat to the safety of patients and resulted in regulatory violations regarding the safe practice of pharmacy.

6. In 2011, Maureen contacted Chief Compliance Investigator Peg Clifford, of the New Hampshire Board of Pharmacy, and reported the unsafe practice of pharmacy in the Seabrook Walmart pharmacy. She also contacted David Kelly, her district manager, and reported that the Seabrook store lacked sufficient staff to function safely.

Summer is very busy for the Seabrook pharmacy and Maureen was required to practice short staffed and fill prescriptions within set business goals.

7. In November of 2011, David Kelley was fired and replaced by Pam Dechellis. Pam Dechellis was Maureen's acting district manager until April of 2012. In April of 2012, Walmart hired Joe Certo (hereinafter, Certo) as district manager. In May of 2012, the experienced Seabrook Pharmacy Manager was transferred and replaced by Josh Varieur, an inexperienced pharmacist.

8. In August of 2012, Maureen reported her concerns to Certo that the new Pharmacy Manager was not "up to the job" and that the pharmacy was being operated in a way that posed a serious risk to the safety of patients. Despite these warnings, nothing was done to correct the situation. Maureen felt increasing stress due to the staffing issues and her commitment to the safe practice of pharmacy.

9. In August of 2012, a serious dispensing error occurred. Varieur, the new and inexperienced Pharmacy Manager, attempted to blame Maureen for the mistake. Ultimately, it was determined that Maureen was not the cause of the error.

10. By September 19, 2012, the public safety risk at the Seabrook pharmacy had become so grave that Maureen was suffering physical symptoms due to severe stress and it was necessary for her to take a medical leave of absence. On September 19, 2012, Dr. Robert Howe prescribed Maureen a two week medical leave of absence due to a serious health condition. See attached Exhibit A.

11. Upon her return to the pharmacy on October 3<sup>rd</sup>, Maureen learned that defendant Fonseca, a pharmacy technician employed by Walmart at the Seabrook

pharmacy, had accessed Maureen's private and protected health information, discovered that Maureen was being treated with a prescription medication for a serious medical condition, and disclosed this private and protected health information to the other employees of the Seabrook pharmacy. Walmart permitted its pharmacy technicians to access the private and protected health information at its pharmacies.

12. Maureen reported this serious HIPAA violation and invasion of her right of privacy to Certo. During this communication, she informed Certo of her serious medical condition and her treatment for anxiety/depression.

13. Rather than discipline Fonseca for such a serious violation, Walmart and Certo instead transferred Fonseca to the loss prevention department of the same store. This was actually a promotion and resulted in Fonseca being given more responsibility and more access to private and protected health information. Fonseca should have been disciplined or transferred to another store with training to prevent such a serious breach from ever happening again.

14. As a pharmacist, Maureen was legally responsible for the pharmacy employees and the safe practice of pharmacy in the store while she was on duty. Maureen again reported her concerns related to the unsafe practice of pharmacy at the Seabrook pharmacy to Certo and requested assistance in staffing to enable the safe practice of pharmacy consistent with the laws, rules and regulations governing the practice of pharmacy in New Hampshire.

15. Instead of addressing her concerns, in November of 2012, Walmart discontinued pharmacist overlap hours creating a further threat to public safety.

Maureen reported the unsafe practice of pharmacy and the threat to the public safety created by these circumstances one last time to Walmart management.

16. Maureen held a good faith belief that she was unable to practice pharmacy safely and in accordance with the laws, rules and regulations in the practice of pharmacy in New Hampshire. The terms and conditions at the Seabrook pharmacy interfered with her professional judgment, her ability to protect the public health, safety and welfare, her ability to properly counsel patients, her ability to engage in prospective drug review, and generally her ability to practice pharmacy as defined under RSA 318:1-XIV and Ph. 501.01 and Ph. 701.02 and Ph. 706.02 and 03. These issues were reported to Certo.

17. Over the Thanksgiving holiday in 2012, Maureen was moving to a new residence. When she next reported to work at the Seabrook store and looked for her pharmacy key, she realized that she did not have it. She used the available "floater" key to access the pharmacy and returned the "floater" key to its secure location. At no time was there a security breach in the pharmacy.

18. Maureen thereafter searched for her pharmacy key but was unable to locate it. In accordance with Walmart policies, she immediately reported the loss of this key to Walmart security upon her return to the pharmacy. This resulted in the pharmacy locks being changed and new keys issuing. By reporting the loss of the key, Maureen again practiced safe pharmacy by ensuring that the pharmacy remained secure. At no time was there a breach of security in the pharmacy.

19. On November 27, 2012, with no advance warning, Maureen was fired. The reason given was that she had "lost her pharmacy key." This reason is a pretext for the real reasons that she was fired – she reported the unsafe practice of pharmacy at the Seabrook store, the threat to public safety, the violation of HIPAA, the invasion of her right of privacy, her discrimination for having a serious medical condition, and the treatment she received for that condition. No male pharmacist was terminated for having lost his pharmacy key. Furthermore, other pharmacy employees left the pharmacy unsecured and they were not terminated.

20. As a direct, foreseeable, and proximate consequence of Maureen's termination, she has suffered economic and professional reputation damages, humiliation, pain and suffering, anxiety, emotional distress, and a loss of enjoyment of life.

21. At all times relevant herein, Maureen was able to perform the essential functions of her position, with or without accommodation.

22. Maureen filed a timely Charge of Discrimination with the New Hampshire Commission for Human Rights dated April 18, 2013, a copy of which is attached hereto and incorporated herein by reference as Exhibit B.

#### IV. CAUSES OF ACTION

##### COUNT I

##### **(Discrimination – RSA 354-A – Defendant Walmart)**

23. Maureen incorporates herein by reference each and every paragraph above and below.



24. Maureen was discriminated against by Walmart due to her serious medical condition, need for leave as prescribed by her doctor, and her gender.

25. Walmart's termination of Maureen's employment as alleged in the preceding paragraphs are violations of RSA 354-A:7, and other applicable laws, in that Walmart treated Maureen differently than male employees in her terms, conditions or privileges of employment including terminating her employment due to her serious medical condition.

26. Walmart selectively enforced policies against Maureen that were not enforced against male employees and neglected to follow policies with Maureen that it followed with male employees, and did so for the purpose of terminating Maureen because of her serious medical condition.

27. Walmart treated Maureen differently than other employees in her terms, conditions or privileges of employment including terminating her employment due to her receiving treatment for her serious medical condition.

28. Walmart selectively enforced policies against Maureen that were not enforced against other employees and neglected to follow policies with Maureen that it followed with other employees, and did so for the purpose of terminating Maureen because of her receiving treatment for her serious medical condition.

29. Walmart treated Maureen differently than other employees in her terms, conditions or privileges of employment including terminating her employment due to her gender.

30. Walmart selectively enforced policies against Maureen that were not enforced against male employees and neglected to follow policies with Maureen that it followed with male employees, and did so for the purpose of terminating Maureen because of her gender.

31. Walmart violations of 354-A:7, were committed willfully, intentionally, or with reckless indifference to Maureen's rights.

**COUNT II**

**(Retaliation – RSA 275-E, et seq. and RSA 354-A:19 – Defendant Walmart)**

32. Maureen repeats and incorporates herein by reference each and every paragraph that appears above and below.

33. Walmart's action in terminating Maureen's employment was unlawful retaliation for Maureen having engaged in a protected activity under RSA 275-E. After reporting public safety and staffing issues to Certo and Walmart, she was fired. In particular, Maureen notified the New Hampshire Board of Pharmacy and Certo about the understaffing and safety issues that caused the unsafe working conditions and serious dispensing errors described herein.

34. Maureen also notified Walmart and Certo of her serious medical condition and took a medically necessary leave of absence to receive treatment for that condition.

35. Following her return from her medical leave, Walmart retaliated against Maureen by terminating her employment.

36. Walmart's violations of RSA 275-E and RSA 354-A:19 were willful, intentional, or done with reckless indifference to Maureen's rights.

**COUNT III**  
**(Wrongful Termination – Defendant Walmart)**

37. Maureen repeats and incorporates herein by reference each and every paragraph that appears above and below.

38. Walmart's termination of Maureen was motivated by bad faith, malice, or retaliation.

39. Maureen was fired by Walmart because she engaged in acts that public policy would encourage, namely reporting the unsafe operation of the Seabrook pharmacy, receiving treatment for her serious medical condition, and reporting a serious violation of HIPAA and her right of privacy.

40. Walmart's wrongful termination of Maureen's employment was willful, intentional, or done with reckless indifference to Maureen's rights.

**COUNT IV**  
**(Invasion of Privacy – Defendants Walmart and Fonseca)**

41. Maureen repeats and incorporates herein by reference each and every paragraph that appears above and below.

42. Fonseca accessed and disclosed Maureen's private and protected health information in violation of Maureen's right of privacy and is therefore personally liable for damages to Maureen.

43. Further, Walmart is liable for Fonseca's violation because Fonseca was Walmart's employee when she committed this violation. Fonseca was able to access Maureen's private and protected health information as a pharmacy technician employed

by Walmart. Fonseca disclosed this information while working as a pharmacy technician on Walmart's behalf.

44. The publicizing of this private, secluded, secret and protected health information was highly offensive and of no legitimate concern to the public.

45. Walmart and Fonseca's violation of Maureen's right of privacy and HIPAA rights was willful, intentional or done with reckless indifference to the damages caused to Maureen.

**COUNT V**  
**(Negligent Supervision – Defendant Walmart)**

46. Maureen repeats and incorporates herein by reference each and every paragraph that appears above and below.

47. Walmart was responsible for training and supervising Fonseca while she worked as Walmart's employee and had access to Maureen's private and protected health information.

48. Walmart was negligent in its training and supervision of Fonseca by failing to prevent Fonseca's invasion of Maureen's privacy and disclosure of Maureen's private and protected health information to the Scabrook pharmacy employees.

**COUNT VI**  
**(Intentional Infliction of Emotional Distress –  
Defendant Walmart and Fonseca)**

49. Maureen repeats and incorporates by reference each and every paragraph that appears above and below.

50. Fonseca's intentional disclosure of Maureen's private and protected health information to the pharmacy employees caused Maureen to suffer severe emotional distress.

51. Fonseca knew and intended to cause Maureen embarrassment and emotional distress by disclosing this information.

52. Fonseca's disclosure of Maureen's private and protected health information was extreme, outrageous and intolerable in a civilized community.

**COUNT VII**  
**(Negligent Infliction of Emotional Distress --**  
**Defendant Walmart and Fonseca)**

53. Maureen repeats and incorporates each and every paragraph that appears above and below.

54. Fonseca's disclosure of Maureen's private and protected health information to the pharmacy employees caused Maureen to suffer severe emotional distress.

55. Walmart was negligent in allowing Fonseca to disclose Maureen's private and protected health information to the Seabrook pharmacy employees.

56. Fonseca was negligent in disclosing Maureen's private and protected health information to the Seabrook pharmacy employees.

57. It was foreseeable that Fonseca's disclosure of Maureen's private and protected health information would cause Maureen to suffer severe emotional distress.

V. DAMAGES

58. Maureen repeats and incorporates herein by reference each and every paragraph that appears above and below.

59. Maureen alleges that as a direct, foreseeable and consequential result of Walmart and Fonseca's actions, breaches, and failures to act as detailed herein, she suffered the following permanent damages:

A. Lost wages, past, present and future together with the value of any and all incidental benefits, including, but not limited to life insurance, health insurance, and any additional benefits identified at the time of trial;

B. Lost earning capacity;

C. Lost seniority;

D. Emotional distress, humiliation, exacerbation of her serious medical condition, embarrassment, loss of enjoyment of life and life's pleasures;

E. Treble damages, together with costs and lawful interest thereon, as Walmart, Certo, and Fonseca's acts were reckless and/or wanton as alleged herein;

F. Enhanced compensatory damages, as Walmart, Certo, and Fonseca's conduct rose to the level of reckless indifference and/or disregard of the consequences to Maureen that ultimately caused Maureen's damages, as alleged herein; and

G. Costs and reasonable expert fees, together with lawful interest thereon and attorney's fees as allowed by law.

VI. PRAYERS FOR RELIEF

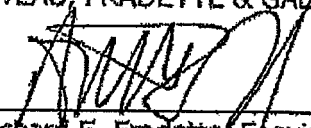
60. The plaintiff prays that this Honorable Court award her the following relief:

- A. A trial by jury on all issues;
- B. Reasonable compensation for the damages she has suffered as alleged herein;
- C. Enhanced compensatory damages against the defendants because their acts, as alleged in the preceding paragraphs, were willful, wanton, and/or recklessly indifferent to the plaintiff's rights;
- D. Reasonable attorney's fees, costs, and expert witness fees; and
- E. Such other and further relief as may be just and equitable.

The foregoing statements are true to the best of my knowledge, information and belief.

September 11, 2014

Respectfully submitted,  
Maureen McPadden, Plaintiff  
By and through her attorneys,  
BELIVEAU, FRADETTE & GALLANT, PA

By:   
Richard E. Fradette, Esquire (Bar No. 844)  
91 Bay Street, P.O. Box 3150  
Manchester, NH 03105  
(603) 623-1234

DATE: 7/25 TIME: 1230

LOCATION: \_\_\_\_\_

SERVICE: IN HAND ABODE

G. Malgeri

DEPUTY SHERIFF G. MALGERI # 280  
ROCKINGHAM COUNTY NH