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**IN THE SECOND DISTRICT COURT,  
STATE OF UTAH, WEBER COUNTY**

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**LEVI COLEMAN,**

Plaintiff,

vs.

**OGDEN CITY and the OGDEN CITY  
FIRE DEPARTMENT**

Defendants.

**COMPLAINT  
(and Jury Demand)**

Civil No. \_\_\_\_\_

Judge \_\_\_\_\_

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Levi Colman (“Mr. Coleman” or “Plaintiff”), by and through his undersigned attorneys, hereby complains and alleges against Defendants Ogden City and the Ogden City Fire Department (referred to as the “Department” and collectively as “Ogden City”) as follows:

### **NATURE OF CLAIMS**

1. This action is brought by a current employee of the Defendant under Utah Code Ann. § 26-61a-111 and §26-61a-115, for the nondiscrimination of government employees under the Utah Medical Cannabis Act.

2. Plaintiff seeks damages, attorney's fees, costs and interest, compensatory, punitive, and all other awardable damages.

### **PARTIES**

3. Mr. Coleman is an individual, competent to bring this action, who is a citizen of the State of Utah, a resident of Salt Lake County, Utah, and has been an employee of Ogden City.

4. Ogden City is a municipal corporation and political subdivision of the State of Utah organized pursuant to U.C.A. §10-1-201, et seq.

5. Ogden City Fire Department is a department within Ogden City, and at all times relevant hereto employed Mr. Coleman

### **JURIDICTION AND VENUE**

6. This court has original jurisdiction over all claims against Defendants pursuant to U. C. A. § 78A-5-102.

7. Venue is proper in this District pursuant to U. C. A. § 78B-3-307, as the events alleged herein took place within this judicial district.

## GENERAL ALLEGATIONS

8. Ogden City hired Mr. Coleman as a firefighter/EMT on March 7, 2011. The Department subsequently sent him to paramedic school and after completion of the school promoted him to firefighter/paramedic in 2013.

9. At all times thereafter Mr. Coleman performed his job duties in an exemplary manner and was rewarded for doing so by receiving regular salary increases. At no time did Ogden City have any reason or cause to discipline or reprimand Mr. Coleman.

10. Mr. Coleman suffers from chronic back pain although this has not prevented him from performing his job duties.

11. On or about June 23, 2021, Mr. Coleman met with Dr. Corey Anden who gave him a prescription for medical cannabis. This prescription was approved by the State of Utah which issued Mr. Coleman a Medical Cannabis card the following day, June 24, 2021.

12. On August 4, 2021, the Ogden City Fire Department (“Department”) passed a new policy, number R-2104, titled “Drug/Alcohol Fitness for Duty Screenings”. A copy of that policy is attached hereto as Exhibit A.

13. Section 5 of that policy requires employees to report to their supervisor “any use of alcohol or drugs which may affect the employee’s judgment, performance or appropriate behavior when called to work from off duty status.” Section 6 of that same policy requires employees to report the use of prescription or

over the counter medications if the “warning label on [the]medication]” warns of possible impairment.

14. Section 7 of that policy, which incorporates a portion of a National Fire Protection Association’s medical standards number 1582, also requires an employee to report to the Medical Deputy Chief of the Fire Department any “medication prescribed, recommended, or obtained over the counter that may impair or interfere with the performance of essential job tasks.”

15. Mr. Coleman had previously learned of other Department firefighters who had obtained medical cannabis cards and notified the Department of the cards. He also knew that the Department had placed these employees on administrative leave and had given them an ultimatum to surrender the cards if they wanted to return to work.

16. On information and belief, these firefighters subsequently surrendered their medical cannabis cards so that they could return to work and not lose their jobs.

17. Although Mr. Coleman knew that disclosing that he had a medical cannabis card meant he probably would be put on leave, he decided that he had no choice but to notify the Department and then challenge the Department’s conduct which he believed violated Utah law.

18. On or about August 31, 2021, Mr. Coleman notified Deputy Chief Michael Slater, via email, that he possessed a medical cannabis card.

19. Chief Slater never responded to Mr. Coleman’s email.

20. Accordingly, on September 2, 2021, Mr. Coleman sent Chief Slater a follow-up text message to confirm that he had received Mr. Coleman's prior email notifying him that he had obtained a medical cannabis card.

21. Ogden City immediately responded to these notifications by directing Mr. Coleman to undergo a "Fit for Duty" evaluation with Dr. Foote at the Intermountain Healthcare WorkMed Clinic in Ogden, Utah.

22. A "Fit for Duty" evaluation generally is used either for annual reviews of firefighter capability or to ensure that those who have gone on extended leave or needed medical treatment are able to return to work and perform the functions of their job.

23. A "Fit for Duty" test usually involves a METS test (Metabolic Equivalents of Task) which measures the body's expenditure of energy and a physical fitness test.

24. Mr. Coleman had easily passed both the METS test as well as the physical fitness test every year.

25. Dr. Foote did not require Mr. Coleman to perform either a METS test or a physical fitness test during his September 3, 2021, "Fit for Duty" evaluation. Dr. Foote also did not require Mr. Coleman to take a drug test.

26. Rather, Dr. Foote's fitness for duty evaluation of Mr. Coleman was limited to talking with him and confirming that he had been issued a medical cannabis card.

27. Dr. Foote then issued a "Medical Report" dated September 3, 2021, which stated that "[b]ased on the information available to [him] Mr. Coleman had a

“medical condition which would “endanger applicant or public.” A copy of that “Medical Report” is attached hereto as Exhibit B.

28. Dr. Foote also checked the box indicating that this medical condition would “interfere with performance” and then in the space provided for an explanation wrote “potential impairment.”

29. In another portion of the Medical Report, Dr. Foote circled item 2, “Restricted activities” and then listed “Essential job tasks: #1, 3,4,5,6,7, 8, 9, 10, 11, 12, 13.” No explanation was provided as to what these essential job tasks were.

30. Pursuant to section 7 of policy R-2014, upon receipt of the Medical Report, the Fire Department was supposed to “make a determination if the employee can return to work on a case-by-case basis.” However, the Department made no such case-by-case determination but instead immediately suspended Mr. Coleman without pay.

31. Ogden City also told Mr. Coleman that he would be allowed to return to work only if he surrendered his medical cannabis card. Mr. Coleman chose to not surrender his card.

32. On September 8, 2021, Mr. Coleman reached out to Chief Slater and asked for an opportunity to perform the annual fit for duty test to show that he was ready and able to return to work.

33. Chief Slater refused to allow him to perform the evaluation stating, “you are on sick leave until WorkMed clears you.”

34. On information and belief, it is alleged that earlier in the year Ogden City took similar action against one or more firefighters suspending them, albeit with pay, when they reported they had obtained a medical cannabis card.

35. Mr. Coleman remains on suspension, without pay, causing him further stress and anxiety and has been informed that he will not be allowed to return to work unless he surrenders his medical cannabis card.

**FIRST CAUSE OF ACTION**  
**(Violation of Utah Code Ann. § 26-61a-111)**

36. Mr. Coleman alleges and incorporates by reference all paragraphs set forth above.

37. In December 2018, the Governor of Utah signed into law the Medical Cannabis Act. U.C.A. §§ 26-61a-101, et seq (hereinafter the “Act”).

38. Section 111 of the Act, U.C.A. § 26-61a-111(1), which in its current form became effective on July 1, 2021, reads in part:

- (1) For purposes of medical care ... a patient’s use, in accordance with this chapter of cannabis in a medical dosage form ...:
  - a. is considered the equivalent of the authorized use of any other medication used at the discretion of a physician; and
  - b. does not constitute the use of an illicit substance or otherwise disqualify an individual from needed medical care.

39. The next section of the statute, U.C.A. § 26-61a-111(2)(a), reads, “Notwithstanding any other provision of law and except as provided in Subsection (2)(b), the state or any political subdivision shall treat an employee’s use of medical

cannabis in accordance with this Chapter or § 58-37-3.7 in the same way the state or political subdivision treats employee use of any prescribed controlled substance.”

40. In addition, another section of the Act, U.C.A. §26-61a-115, provides that “[w]hen an employee, officer, or agent of the state or a political subdivision makes a finding, determination, or otherwise considers an individual’s possession or use of cannabis . . . the employee, officer, or agent may not consider the individual’s possession or use any differently than the lawful possession or use of any prescribed controlled substance . . .”

41. Ogden City claims that it has complied with subsection U.C.A. §26-61a-111(2)(a) and 115 citing to its new policy, R-2104, which states, under section 7, that “Medical cannabis will be treated in the same manner as a prescribed controlled substance.”

42. On information and belief, Ogden City has not followed its own policy as there are one or more firefighters who have been prescribed medication which are listed as controlled substances, have notified the Department that they have the prescription (or the Department has learned of the prescription), and have been allowed to continue working as firefighters.

43. In comparison, Ogden City immediately suspended Mr. Coleman without pay when it learned he had obtained a medical cannabis card and the city now is refusing to allow him to return unless he surrenders that card.

44. Ogden City's disparate treatment of Mr. Coleman after he obtained a cannabis card violates U.C.A. §26-61a-111(2)(a) and 26-61a-115.

45. Ogden City has also violated subpart (2)(b) of U.C.A. §26-61a-111(2)(b) which reads, "A state or political subdivision employee who has a valid medical cannabis card is not subject to adverse action, as that term is defined in Section 67-21-2, for failing a drug test due to marijuana or tetrahydrocannabinol *without evidence* that the employee was impaired or otherwise adversely affected in the employee's job performance due to the use of medical cannabis" (emphasis added).

46. U. C. A. § 67-21-2 defines adverse action as "discharge, threaten, or discrimination against an employee in a manner that affects the employee's employment, including compensation, terms, conditions, location, rights, immunities, promotions, or privileges."

47. Mr. Coleman has neither failed a drug test nor been impaired at work and there is no evidence that his use of medical cannabis adversely affected his job performance.

48. Notwithstanding this, Ogden City has suspended Mr. Coleman without pay, and constructively discharged him by refusing to allow him to return to work unless he gives up his medical cannabis card, simply because Dr. Foote opined, without any evidence, that possession of the cannabis card rendered Mr. Coleman unfit for duty because of "potential impairment."

49. Ogden City's actions constitute an adverse action as defined under U.C.A. §67-21-2 and violate U.C.A. § 26-61a-111(2)(b), because the city failed to find an *actual impairment* on the job before it took an adverse employment action against Mr. Coleman.

50. As a medical cannabis card holder, Mr. Coleman is a member of a class for whose special benefit the statute was created and intended to protect.

51. As result of Ogden City's multiple violations of U.C.A. §26-61a-111 and of §26-61a-115, Mr. Coleman has suffered injury in the form of lost wages and benefits (including but not limited to lost sick leave and vacation time) and has suffered severe emotional distress and seeks recovery of damages to compensate him for those injuries.

52. Mr. Coleman also seeks injunctive relief requiring Ogden City to amend their medical cannabis policies and practices to comply with §26-61a-111 and §26-61a-115, and to reinstate him in his position as firefighter/paramedic and restore his sick leave and vacation time that he has been forced to use.

**SECOND CAUSE OF ACTION**  
**(Wrongful Discharge in Violation of Public Policy)**

53. Mr. Coleman again alleges and incorporates by reference all paragraphs set forth above.

54. A discharged employee has a cause of action for wrongful termination in violation of public policy if their termination violated a "clear and substantial" public policy. *Touchard v. La-Z-Boy Inc.*, 148 P.3d 945, 948 (Utah 2006).

55. Ogden City constructively discharged Mr. Coleman by suspending him without pay and not allowing him to return to work until he agrees to “give up” his legal medical cannabis card.

56. U. C. A. § 26-61a-111 and §26-61a-115 make clear that a public employee has the legal right to obtain and use medical cannabis and to not be treated differently or be subjected to adverse action simply for obtaining a medical cannabis card or using cannabis in the prescribed manner.

57. According to the 2010 U.S. Census, over 100,000 individuals were then employed by either the State of Utah or a subdivision of the State, a figure which has increased over the last ten years. In addition, the right to seek and use a medical cannabis card applies to all employees in Utah and has critical importance to the public as a whole as the use of medical marijuana is a viable alternative to highly addictive opioid drugs and thereby constitutes a substantial public policy.

58. In exercising his legal right to possess a medical cannabis card, pursuant to U. C. A. § 26-61a-101 et seq., Mr. Coleman implicates this clear and substantial public policy.

59. Notwithstanding this clear public policy as set forth in the Act, Ogden City placed Mr. Coleman on unpaid leave and has refused to allow him to return to work unless he gives up his medical cannabis card and stops using medical cannabis.

60. Ogden City’s conduct constitutes a constructive discharge of Mr. Coleman in violation of a clear and substantial public policy.

61. Ogden City is liable to Mr. Coleman for all damages that flow from the unpaid leave and constructive discharge and are recoverable. This includes lost wages, lost future wages, the value of lost benefits, compensatory damages, and consequential damages.

62. In addition, Ogden City has acted willfully and intentionally, or with reckless disregard in violation of Mr. Coleman's rights. Accordingly, he is entitled to also recover punitive damages.

**THIRD CAUSE OF ACTION**  
**(Violation of UPPEA)**

63. Mr. Coleman again alleges and incorporates by reference all paragraphs set forth above.

64. The Utah Whistleblower's Act, Utah Code Ann. § 65-21-1 et seq., protects employees who communicate or object to violations of a state or federal law, rule, or regulation. Specifically, Utah Code Ann. § 67-21-3(1)(a)(ii) states that "[a]n employer may not take adverse action against an employee because the employee ... communicates in good faith ... a violation or suspected violation of a law, rule, or regulation adopted under the law of this state, a political subdivision of this state, or any recognized entity of the United States."

65. In addition, Utah Code Ann. § 67-21-3(3) bars adverse actions "against an employee because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law of this state ..."

66. As more specifically set forth above, Mr. Coleman objected to Defendant's violation of the Utah Medical Cannabis Act by notifying the Department of his possession of

a medical cannabis card and then by maintaining that card even after the Department placed him on leave and communicated that he would have to surrender the card before he would be allowed to return to work.

67. Mr. Coleman's notification to the Department was an act of objection to the department's practice of placing employees on leave for possessing the cards.

68. Mr. Coleman's refusal to surrender the medical cannabis card to the state when the Department told him he could not return to work unless he surrendered the card, was an additional act of objection to the Department's violations of the Utah Medical Cannabis Act. Mr. Coleman's objections to the Department's violations constituted the communication of a violation or suspected violation of law.

69. The Department took adverse actions against Mr. Coleman because of his objections to its law violations.

70. Specifically, in response the Department subjected Mr. Coleman to an irregular fit for duty test with the intent to place him on leave for possessing a medical cannabis card. The Department then placed Mr. Coleman on leave and refused to return him to active duty despite his pleas to allow him to participate in a normal fit for duty test. Finally, the Department refused to reinstate Mr. Coleman when he would not surrender his medical cannabis card.

71. Defendants' actions constitute violations of the Utah Whistleblower Act as the acts constitute "adverse action" as defined in Utah Code Ann. § 67-21-2(2) and Mr. Coleman has been injured as a result of Defendants' actions.

72. Mr. Coleman is entitled to back pay and benefits, seniority rights, reinstatement (or front pay and benefits in lieu of reinstatement), equitable relief, and interest (both pre- and post-judgment).

73. Mr. Coleman is also entitled to recover attorneys' fees and costs incurred in bringing this action.

**FORTH CAUSE OF ACTION**  
**(Repeated Violations of Utah Health Code)**

74. Mr. Coleman again alleges and incorporates by reference all paragraphs set forth above.

75. In March of 2021, the legislature modified the enforcement provisions of the Utah Health Code so that "... any association, or corporation, or the officers of any of them, who violate any provision of [the Utah Health Code] ... may be assessed, in a judicial civil proceeding, a penalty not to exceed the sum of \$5,000 per violation..." and these provisions became effective on May 5, 2021. U. C. A. § 26-23-6; 2021 Utah Senate Bill No. 195, Utah Sixty-Fourth Legislature - 2021 General Session.

76. The maximum \$5,000 penalty "may only be assessed against the same individual, association, or corporation one time in a calendar week."

77. However, when the alleged conduct is reckless or done in willful disregard of the provisions of the health code and is likely to cause serious threat to public health, then the penalty may be assessed for each day of violation. Utah Code Ann. § 26-23-6.

78. Ogden City and its departments are a municipal corporation under the Utah Municipal Code.

79. As stated above, in paragraphs 17 - 52, Ogden City and the Department began violating Utah Health Code provisions U.C.A. §26-61a-111(2)(a), U.C.A. 26-61a-115, and

U.C.A. 26-61a-111(2)(b), causing harm to Mr. Coleman, on September 2, 2021. Ogden City and the Department have continued, repeatedly violating these provisions every week through the date of this filing.

80. Ogden City and the Department are liable to Mr. Coleman for the civil penalty provided by U. C. A. § 26-23-6, at the rate of \$5,000 per week, from the September 2, 2021, until they discontinue violating the Utah Health Code.

81. In addition, Ogden City knew, through interactions with the legislator who sponsored the Medical Cannabis bill and others, that suspension of firefighters for simply possessing a cannabis card was a violation of the Medical Cannabis Act. Notwithstanding this knowledge Ogden City suspended Mr. Coleman without pay knowing that doing so violated his rights under that Act.

82. Ogden City's conduct is likely to result in serious threat to public health as it would force its firefighters to use opioid pain medication which is addictive, and more likely to impair their ability to perform their job duties, thereby putting the public at risk.

83. Accordingly, in the alternative, Ogden City and the Department are liable to Mr. Coleman for the civil penalty provided by U. C. A. § 26-23-6, at the rate of \$5,000 per day, from the September 2, 2021 until they discontinue violating the Utah Health Code.

### **JURY DEMAND**

Plaintiff, by and through counsel of record, hereby demands a trial by jury of any issue triable of right by jury.

## **PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgement as follows:

1. For an order and judgment against Defendants for appropriate back pay, lost benefits, and reimbursement for any other of Plaintiff's pecuniary losses;
2. For injunctive relief, requiring Ogden City to immediately reinstate Mr. Coleman and to create and abide by a medical cannabis policy that is in compliance with § 26-61a-111 and §26-61a-115;
3. For a civil penalty at the rate of either \$5,000 per week or \$5,000 per day, pursuant to U. C. A. § 26-23-6, for every week or day Defendants have violated the Utah Health Code;
4. For Plaintiff's reasonable attorney's fees and costs;
5. For punitive damages in substantial, appropriate, and reasonable amounts; and
6. For such further and other relief the court deems appropriate.

DATED this \_\_\_\_ day of November, 2021.

**STRINDBERG SCHOLNICK BIRCH  
HALLAM HARSTAD THORNE**

*/s/ Erik Strindberg*  
Erik Strindberg  
*Attorney for Plaintiff*