

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

WALGREEN CO.
104 Wilmot Road
Deerfield, Illinois 60015

Plaintiff

v.

MERITUS MEDICAL CENTER, INC.
11116 Medical Campus Road, Suite 3918
Hagerstown, MD 21742

Defendant

Case No.: _____

SPEEDY HEARING REQUESTED

**COMPLAINT FOR DECLARATORY JUDGMENT, PRELIMINARY AND
PERMANENT INJUNCTIVE AND OTHER RELIEF**

Plaintiff Walgreen Co. (“Walgreens”), by its undersigned counsel, Whiteford Taylor & Preston LLP, hereby brings this Complaint for Declaratory Judgment and for Preliminary and Permanent Injunctive and Other Relief against Meritus Medical Center, Inc. (“Defendant” or “Meritus”), and states as follows:

INTRODUCTION

Walgreens operates a retail pharmacy in the Robinwood medical campus in Hagerstown, Maryland, pursuant to a Lease Amendment with Meritus. As part of the Lease Amendment, Meritus expressly agreed not to allow a second retail pharmacy on the Robinwood medical campus. However, despite that restrictive covenant, Meritus has opened and now operates a retail pharmacy on the Robinwood medical campus in direct competition with Walgreens. Walgreens brings this action due to the egregious violation of this bargained-for restrictive covenant.

Walgreens seeks an expedited hearing on its claim for declaratory relief pursuant to Federal Rule of Civil Procedure 57.

PARTIES

1. Plaintiff Walgreens is an Illinois corporation. During all times relevant to this matter, Walgreens has maintained a retail pharmacy establishment at 11110 Medical Campus Rd., Suite 105, Hagerstown, MD 21742.

2. Upon information and belief, Defendant Meritus is a Maryland corporation with its principal place of business in Hagerstown, Maryland.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1), in that this is a civil action between a citizen of Illinois and a citizen of Maryland and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) in that Defendant resides in this district.

FACTUAL ALLEGATIONS

5. Walgreens has operated a retail pharmacy (the “Walgreens Pharmacy”) at the Robinwood medical campus since 2013, pursuant to a certain Lease Amendment, Assignment, Consent to Assignment and Estoppel dated December 13, 2013 (the “Lease Amendment”) by and between Meritus as the Owner/Landlord and Walgreens as the tenant. A true and accurate copy of the Lease Amendment is attached hereto as **Exhibit 1**, and is incorporated herein by reference.

6. Walgreens took over the operations of the retail pharmacy from a prior tenant which operated the pharmacy pursuant to a Lease dated September 1, 2008.

7. Walgreens operates the Walgreens Pharmacy in Suite 105 of the Robinwood medical campus (the “Premises” or “Suite 105”).

8. The Premises is part of the larger medical complex in the Robinwood medical campus in Hagerstown, Maryland.

9. The Meritus Medical Center is part of the Robinwood medical campus.

10. Section 3.i of the Lease Amendment contains a restrictive covenant (the “Restrictive Covenant”) by which Meritus agreed that no part of the Robinwood medical campus, including the Meritus Medical Center, would be used for the operation of a retail pharmacy. Specifically, the Restrictive Covenant provides:

Exclusive. Landlord covenants and agrees that, during the Term and any extension or renewals thereof, no portion of the Building which is owned, leased or controlled directly or indirectly by Landlord or any of its parents, subsidiaries or affiliates nor any other buildings on the Robinwood medical campus (including, without limitation, Meritus Medical Center) which are owned, leased or controlled directly or indirectly by Landlord or any of its parents, subsidiaries, or affiliates (“Landlord’s Property”), will be used for the operation of an outpatient retail pharmacy (including, without limitation, specialty pharmacy) and/or mail order pharmacy.

11. Meritus owns and operates the Meritus Medical Center.

12. The right to exclusivity in the Restrictive Covenant was intended to protect Walgreens and the Walgreens Pharmacy against competition from other retail pharmacies. The Restrictive Covenant was a material inducement to Walgreens to enter into the Lease Amendment and to invest capital into the continued operation of the Walgreens Pharmacy, because it ensured that Walgreens would not face direct competition by other retail pharmacies in the Robinwood medical campus.

13. As a result of the Lease Amendment and the Restrictive Covenant contained therein, Walgreens had an expectation that no other retail pharmacy would operate on the Robinwood medical campus, including within the Meritus Medical Center.

14. Walgreens bargained for the right of exclusivity in the Restrictive Covenant to prevent direct competition within the medical complex and to protect the substantial economic investment it made pursuant to the Lease Amendment and the significant capital expenditures it incurred for operating the pharmacy. Walgreens' substantial economic investment made in reliance of the Lease Amendment and operation of the Walgreens Pharmacy exceeds \$75,000.

15. Meritus has knowingly and intentionally violated the Restrictive Covenant by deliberately planning, either directly or through its affiliates, for another retail pharmacy to operate at the Meritus Medical Center.

16. In the Fall of 2021, Walgreens received information that Meritus might be planning to build out and/or lease additional space at the Meritus Medical Center as a retail pharmacy.

17. In response to this information, Walgreens advised Meritus that any such second pharmacy would be in violation of the Restrictive Covenant in the Lease Amendment and requested that Meritus not proceed with any such plans.

18. Meritus did not respond to Walgreens' communication.

19. Meanwhile, and unbeknownst to Walgreens, Meritus was plotting to attempt to rid itself of the exclusivity obligation imposed by the Restrictive Covenant by selling Suite 105.

20. Meritus kept this contemplated sale secret from Walgreens until it was a *fait accompli*.

21. On or about December 8, 2021, Meritus advised Walgreens that Meritus sold Suite 105, the Premises where Walgreens operates its retail pharmacy.

22. At the time of that sale, Meritus owned (and still owns) the Medical Center where it was planning to build a new retail pharmacy.

23. Suite 105 was sold by Meritus to Water Street Investments, LLC (“WSI”). The managing member of WSI is a physician affiliated with Meritus.

24. The sale of Suite 105 by Meritus was a bad faith attempt by Meritus to avoid having to comply with the exclusivity obligation imposed by the Restrictive Covenant.

25. On or about April 1, 2022, Meritus opened, and it presently operates, a retail pharmacy (the “Meritus Pharmacy”) within the Meritus Medical Center that is in direct competition with Walgreens.

26. The Meritus Pharmacy is owned, leased or controlled directly or indirectly by Meritus, or its parents, subsidiaries or affiliates.

27. The opening and continued operation of the Meritus Pharmacy is in direct contradiction to the plain terms of the Restrictive Covenant found in the Lease Amendment. The operation of the Meritus Pharmacy, in direct competition with the Walgreens Pharmacy, has caused and will continue to cause damages to Walgreens, including, but not limited to lost revenues and loss of its investment in the continued operation of the Walgreens Pharmacy.

28. The Restrictive Covenant attaches to and runs with the land.

29. The Restrictive Covenant binds the land and Meritus, which owns the land and the building where the Meritus Pharmacy is located.

30. The Restrictive Covenant burdens and restricts the use of the land and the property within the Robinwood medical campus.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.