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CIVIL DIVISION

DAVID TURKHEIMER

Plaintiff,

v.

MERCK & CO. INC. and JOHN DOE
CORPS. 1-4

Defendant(s).

) SUPERIOR COURT OF NEW JERSEY.
) LAW DIVISION: HUNTERDON COUNTY
) DOCKET No.: L-302-11

) CIVIL ACTION

) **COMPLAINT**

The Plaintiff, DAVID TURKHEIMER ("Plaintiff"), by and through his attorneys GINARTE O'DWYER GONZALEZ GALLARDO & WINOGRAD, LLP, alleges as follows:

FACTS

1. Plaintiff is a resident of East Meadow, County of Nassau, and State of New York.
2. Defendant Merck & Co. Inc (hereinafter "Merck") is a global corporation headquartered in Whitehouse Station, New Jersey that is engaged in, *inter alia*, the manufacture and sale of pharmaceutical products to health care professionals. Merck's Human Resources personnel and key decision-makers are based out of its Whitehouse Station New Jersey headquarters.

3. Defendants John Doe Corps. 1-4, upon information and belief, are corporate entities, parents, subsidiaries or affiliated companies of Merck who employed Plaintiff or controlled his employment.

4. John Connelly (“Connelly”) is and at all relevant times was a District Business Manager at Merck, and was Plaintiff’s supervisor.

5. Plaintiff has worked for Merck since March 28, 2001, until his employment was unlawfully terminated on or around November 10, 2010. Plaintiff’s performance at Merck was exemplary and Plaintiff received multiple awards and promotions during the course of his employment.

6. Ultimately, and at relevant times, Plaintiff was an Executive Vaccine Specialist at Merck. This position required Plaintiff to oversee the marketing of various pharmaceutical products in a high-volume territory, including NuvaRing, Implanon, and the Gardasil Vaccine (which is a vaccine for women to prevent certain strains of the Human Papilloma Virus).

7. At times, Defendant and Connelly suggested that Plaintiff improperly and illegally market certain pharmaceutical drugs (including Gardasil), by using methods that would violate regulations promulgated by the federal Food and Drug Administration concerning marketing pharmaceutical products. For example, at Plaintiff’s year-end review for the 2009 year, which took place in February, 2010, Connelly urged Plaintiff to make improper suggestions and unsubstantiated claims about Gardasil as a means to more effectively market it to certain doctors. Specifically, Connelly advised Plaintiff to market Gardasil to one doctor (who according to Connelly was an “advocate against high insurance rates”) by suggesting that the doctor would lower his insurance rates by prescribing Gardasil to his patients. Mr. Connelly urged Plaintiff to suggest to a doctor

that the doctor “would be sued” by his patients if he did not prescribe Gardasil. Connelly suggested that Plaintiff tell a doctor that the doctor’s patients would die if the doctor did not prescribe Gardasil.

8. Plaintiff reasonably believed that following these instructions would violate regulations promulgated by the Food and Drug Administration concerning the marketing prescription medications. During the February 2010 meeting, Plaintiff expressly told Connelly that his instructions were illegal.

9. At all times, Plaintiff refused to follow Connelly’s instructions that he improperly market prescription medications. In response to Plaintiff’s continued refusal to follow his improper instructions, Connelly set-out to undermine Plaintiff as to justify the termination of his employment.

10. At relevant times, Plaintiff suffered from sleep apnea and has been prescribed Ambien CR. On or around October 2010, Plaintiff developed a skin rash and was prescribed Prednisone for this condition by his physician. Unbeknownst to Plaintiff, Ambien CR and Prednisone, if taken together, may result in undesired side effects – such as sleepwalking. Plaintiff was wholly unaware of the interaction between Ambien and Prednisone in October of 2010.

11. On the evening of October 26, 2010, Plaintiff took both Ambien CR and Prednisone. Early in the morning on October 27, 2010, the effects of the medications being combined caused Plaintiff to be in a state of semi-unconsciousness. Plaintiff would appear to be alert and physically awake, but actually was incoherent and in a state of semi-unconsciousness and delirium. The effects caused Plaintiff to sleepwalk, enter his car, and drive his vehicle. Plaintiff managed to drive a few blocks from his home until he crashed his vehicle into two parked cars and flipped his vehicle. The accident occurred

around 3:30 a.m. At all times during this incident Plaintiff was not aware of what had happened or what he was doing, because of the effects of the medication.

12. Plaintiff was taken to the hospital immediately after the accident. At the hospital, Plaintiff appeared to be talkative, but incoherent. Doctors – unaware of what was happening to Plaintiff - gave him a regimen of drugs including Ativan (a tranquilizer) and Haldol (an anti-psychotic). Ultimately, doctors determined the source of Plaintiff's condition and Plaintiff was diagnosed with "delirium secondary to medication" which resulted from the combination of Ambien CR and Prednisone.

13. Given the unique and unusual circumstances, no criminal charges or driving citations were placed against Plaintiff.

14. As Plaintiff was expected to work on the date of the accident, Plaintiff's wife Sharon promptly attempted to contact Connelly at Merck's Whitehouse Station location. Unable to reach him, she contacted a co-worker of Plaintiff. Connelly finally called-back Plaintiff's wife at about 6pm. At the time, Plaintiff's wife was still uncertain what had caused the car accident.

15. Plaintiff was released from the Hospital on or around October 28, 2010. Merck's Human Resources Department advised Plaintiff to stay home that Friday (October 29, 2010) on administrative leave. Plaintiff complied with this request.

16. Merck and Connelly requested that Plaintiff provide them with medical records concerning the absences. Plaintiff complied with this request. The medical records provided by Plaintiff demonstrated that Plaintiff was given anti-psychotic medication during his hospitalization.

17. Connelly used the accident, hospitalization, and information he obtained relating to Plaintiff's treatment, as a means to cause the termination of Plaintiff's

employment. Connelly accused Plaintiff of illegally driving under the influence of a narcotic and/or alcohol on October 27, 2010. Connelly suggested that Plaintiff had a mental condition, and advised Merck Human Resources personnel that Plaintiff was “loopy” and unstable.

18. On November 10, 2010 Connelly requested that Plaintiff meet him at a Marriot Hotel in Uniondale on November 12, 2010 @ 2:00pm. When Plaintiff arrived he met with John Connelly, Jim Jones (the Regional Manager), and Monica Murphy, a Human Resources Representative who attended the meeting telephonically. At the meeting, Connelly terminated Plaintiff’s employment, and suggested that Plaintiff had a condition that prevented him from safely operating a motor vehicle and therefore could not work for Merck in his current role.

19. Connelly caused the termination of Plaintiff’s employment because of Plaintiff’s continued refusal to follow Connelly’s improper instructions concerning marketing pharmaceuticals and based upon Connelly’s perception that Plaintiff was disabled.

COUNT I
TERMINATION IN VIOLATION OF PUBLIC POLICY
Pierce v. Ortho Pharmaceutical Corp., 84 N.J. 58 (1980)

20. Plaintiff repeats and realleges the allegations set forth above as if more fully set forth herein.

21. The federal Food and Drug Administration promulgates regulations prohibiting the marketing of pharmaceuticals in certain manners. These regulations are designed to protect the public.

22. Plaintiff was terminated because he refused to follow Connelly’s instructions that Plaintiff illegally market pharmaceuticals.

23. By the acts and practices described above, Defendants terminated Plaintiff's employment unlawfully, in clear violation of the public policy of New Jersey.

24. Defendants acted intentionally and with malice and/or reckless indifference to Plaintiff's rights.

25. Plaintiff has suffered, is now suffering, and will continue to suffer economic injury, monetary damages, compensatory damages, and mental anguish and humiliation as a result of Defendants' unlawful practices.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally for the following relief:

- a. Compensatory damages;
- b. Punitive damages;
- c. Attorneys' fees and costs;
- d. Such other relief that the Court deems equitable and just.

COUNT II
C.E.P.A. – N.J.S.A. 34:19-3

26. Plaintiff repeats and realleges the allegations set forth above as if more fully set forth herein.

27. Plaintiff was terminated because he refused to follow Connelly's instructions that he engage in certain marketing activities. Plaintiff reasonably believed that said marketing activities were illegal and prohibited by laws and regulations governing the marketing of pharmaceutical products.

28. Connelly caused Defendants to terminate Plaintiff's employment because Plaintiff refused to follow said instructions.

29. Defendants acted intentionally and with malice and/or reckless indifference to Plaintiff's rights.

30. Plaintiff has suffered, is now suffering, and will continue to suffer economic injury, monetary damages, compensatory damages, and mental anguish and humiliation as a result of Defendants' unlawful practices.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally for the following relief:

- a. Compensatory damages;
- b. Punitive damages;
- c. Attorneys' fees and costs;
- d. Such other relief that the Court deems equitable and just.

COUNT III
DISCRIMINATION BASED ON PERCEIVED DISABILITY
N.J.S.A. 10:5-1 to -49

31. Plaintiff repeats and realleges the allegations set forth above as if more fully set forth herein.

32. Defendants subjected Plaintiff to mistreatment and ultimately terminated him, in part, because they perceived Plaintiff to be disabled and unable to operate a motor vehicle safely.

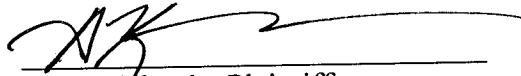
33. Defendants' actions violated the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49.

34. Plaintiff has suffered, is now suffering, and will continue to suffer economic injury, monetary damages, compensatory damages, and mental anguish and humiliation as a result of Defendants' unlawful practices.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally for the following relief:

- a. Compensatory damages;
- b. Punitive damages;
- c. Attorneys' fees and costs;
- d. Such other relief that the Court deems equitable and just.

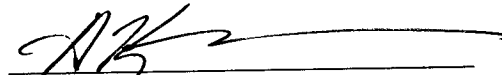
DATED: May 6, 2011


Counsel for the Plaintiff
ADAM J. KLEINFELDT, ESQ.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial jury as to all issues.


DATED: May 6, 2011


Counsel for the Plaintiff
ADAM J. KLEINFELDT, ESQ.

DESIGNATION OF TRIAL COUNSEL

ADAM J. KLEINFELDT, is designated as trial counsel in this matter.

DATED: May 6, 2011


Counsel for the Plaintiff
ADAM J. KLEINFELDT, ESQ.

DEMAND FOR PRODUCTION OF INSURANCE AGREEMENTS

Pursuant to R. 4:10-2(b), demand is hereby made that you disclose to the undersigned whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy all or part of a judgment which may be entered in the action or to indemnify or reimburse for payment made to satisfy the judgment. If so, please attach a copy of each, or alternatively state under oath and certification: (a) policy number; (b) name and address of insurer; (c) inception and expiration date; (d) names and addresses of all persons insured thereunder; (e) personal injury limits; (f) property damages limits; and (g) medical payment limits.


DATED: May 6, 2011


Counsel for the Plaintiff
ADAM J. KLEINFELDT, ESQ.

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that the matters in controversy in this action are not subject of any other action pending in any other court or of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated.

DATED: May 6, 2011


Counsel for the Plaintiff
ADAM J. KLEINFELDT, ESQ.