

COSTELLO & MAINS, P.C.

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Attorneys for Plaintiff

CEFERINO L. DOCULAN, JR., : SUPERIOR COURT OF NEW JERSEY

: HUDSON COUNTY-LAW DIVISION

Plaintiff, :

: Civil Action

v. :

: DOCKET NO.

BAYONNE MEDICAL CENTER, and :

JOHN DOES 1-5 AND 6-10, :

:

Defendants. : **COMPLAINT AND JURY DEMAND**

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Plaintiff Ceferino L. Doculan, Jr., residing in Jersey City, New Jersey, by way of complaint against the defendants, says:

Preliminary Statement

This matter is brought under the New Jersey Conscientious Employee Protection Act (“CEPA”).

In the alternative, a *Pierce v. Ortho Pharmaceuticals* claim is asserted. Plaintiff will elect a remedy at the close of the evidence at trial in the event that both claims remain viable at the close of his evidence.

The basis of plaintiff’s lawsuit is that plaintiff complained about improper blood bank staffing and management procedures at the medical center, which plaintiff believed in good faith were illegal, and/or against New Jersey public policy, and/or against specific New Jersey regulations, inasmuch as the lab was not properly covered during all shifts with individuals capable of performing certain procedures.

Plaintiff was retaliated against as a result of his complaints after twenty years of service.

After plaintiff’s termination, plaintiff’s concerns regarding the illegality of the staffing procedures in the blood bank that they own were validated by the State of New Jersey.

Identification of Parties

1. Plaintiff Ceferino L. Doculan, Jr. is, at all relevant times herein, a resident of the State of New Jersey and was an employee of Bayonne Medical Center.

2. Bayonne Medical Center (hereafter referred to as “Bayonne”) is, at all relevant times herein a New Jersey corporation maintaining a principal place of business on 29th Street and Avenue E in Bayonne, New Jersey, and was the employer of the plaintiff and other individuals mentioned herein.

3. Defendants John Does 1-5 and 6-10, currently unidentified, are individuals on the one hand and entities on the other whom on the basis of their direct acts or on the basis of *respondeat superior* are answerable to the plaintiff.

General Allegations

4. Plaintiff worked as a generalist medical technologist, also commonly referred to as “hematology technician,” until his retaliatory discharge on or about September 20, 2010.

5. Plaintiff had, in essence, a record of approximately twenty years of service with Bayonne, excepting a four year period when plaintiff relocated to Utah.

6. Plaintiff began to report what plaintiff considered in good faith to be illegal staffing practices in the blood bank at Bayonne, principally involving the practices of plaintiff’s supervisor, Maissa Alkabbani (Maissa).

7. Despite the fact that Maissa was titled “supervisor” of the blood bank, and given the actual powers and authority of a supervisor, she in fact did not possess the requisite credentials for her job as set forth in the New Jersey State Sanitary Code and NJSA 8:44-2.4.

8. This law requires certain credentials which Maissa did not meet and, therefore, the use of her as a supervisor was illegal according to the law, or so plaintiff believed in good faith.

9. Further, the law encapsulates New Jersey compelling public policy as it relates to public health.

10. Maissa began to alter the staffing at the blood bank in such a manner so as to create staffing scenarios where there were no technicians capable of performing certain necessary “cross match” and other blood screening procedures.

11. On at least one occasion, plaintiff recalls that the inability to provide someone with the requisite skill presented a potentially life-threatening situation for a patient requiring a particular cross match from the blood bank.

12. To do such cross match requires special skills and certification.

13. Maissa did not possess them.

14. Plaintiff began to specifically complain about these practices, both orally and in writing, to inside management and to HR in June and July of 2010.

15. In addition, plaintiff complained that Maissa had misrepresented her work experience as a blood banker, falsely claiming that she worked under the direction of Pilar Brahim, a blood bank manager in Hackensack.

16. Among these complaints was a complaint to Alan Weissman, the director of the laboratory department under whose auspices the blood bank was administrated.

17. This complaint took place on or about July 11, 2010.

18. Mr. Weissman told the plaintiff that he would look into the problem, but he never got back to the plaintiff and plaintiff never heard from him again.

19. Plaintiff also complained to the Vice President of Human Relations, Jennifer Dobin, on or about July 28, 2010, but once again, these concerns were dismissed as invalid and/or ignored and not responded to.

20. Upon information and belief, Maissa became aware of plaintiff's complaints and determined to retaliate against plaintiff as a result.

21. Plaintiff's termination was therefore an intentional act of egregious retaliation under CEPA.

22. Because Maissa had the power to effect plaintiff's termination, either directly or through a "cat's paw" by poisoning plaintiff's reputation with others who actually possess the power to fire plaintiff, she acted as a member of upper management actually participating in plaintiff's discharge and punitive damages are thus appropriate.

23. Plaintiff, who had had an essentially unblemished work record for two decades, suddenly found that he was being repeatedly disciplined, counseled, written up and otherwise dishonestly micromanaged in the two months prior to his termination on September 20.

25. Substantially all or all of these disciplinary events are in fact fictional and are asserted as pretext by Maissa either directly with the knowing cooperation of others, or by Maissa through the use of "cat's paw" involvement of others in order to justify plaintiff's termination and to dishonestly cover her desire to retaliate against plaintiff because of his complaints about her.

26. After plaintiff's discharge, plaintiff contacted the New Jersey Department of Health and Senior Services regarding his concerns about Maissa that he'd long been expressing internally.

27. Although, of course, plaintiff had already been terminated and therefore does not contend that his contact of the Department of Health was a factor in his discharge, plaintiff claims that his contact of the Department is noteworthy for the following reason.

28. After the Department of Health investigated precisely those concerns that plaintiff had been raising orally and in writing, and which had been essentially ignored and disregarded internally, the Department of Health "substantiated" plaintiff's allegations.

29. Upon information and belief, the Department has required that Bayonne go on to create "an acceptable plan of correction" of the situation, particularly pertaining to plaintiff's complaints.

30. Bayonne is also required to reassign Maissa Alkabbani to "supervise only the non technical areas of the laboratory."

31. Plaintiff's concerns, thusly, were valid as well as having been expressed in good faith.

32. The fact that they were repeatedly ignored created the impression that Maissa had the opportunity to, with impunity, retaliate against the plaintiff, and she used her power and authority to do so.

33. Thus, CEPA has been violated egregiously, warranting the imposition of punitive damages.

34. In the alternative, New Jersey State public policy specifically prohibits retaliation against individuals who report violations of New Jersey law concerning the public health, safety and welfare and, to wit, such violations as are implicated herein.

COUNT I

CEPA Violation

35. Plaintiff hereby repeats and realleges paragraphs 1 through 34 as though fully set forth herein.

36. For the reasons set forth above, plaintiff alleges an egregious, intentional violation of CEPA warranting the imposition of punitive damages.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with attorney's fees, enhanced attorney's fees, interest, costs of suit, equitable back pay, equitable front pay, equitable reinstatement and any other relief the Court deems equitable and just.

COUNT II

Pierce v. Ortho Pharmaceuticals In the Alternative to Count I

37. Plaintiff hereby repeats and realleges paragraphs 1 through 36 as though fully set forth herein.

38. To the extent that, at the close of evidence at trial, both Count I and Count II continue to be viable, plaintiff will elect a remedy as between the two.

39. Plaintiff claims that the *Pierce* doctrine has been violated, inasmuch as plaintiff has satisfied the elements of *Pierce* and inasmuch as New Jersey public policy prohibits retaliation and/or prohibits the wrongful conduct of which plaintiff complained.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with attorney's fees, enhanced attorney's fees, interest, costs of suit, equitable back pay, equitable front pay, equitable reinstatement and any other relief the Court deems equitable and just.

COSTELLO & MAINS, P.C.

DATED: **By:** _____

Kevin M. Costello

DEMAND TO PRESERVE EVIDENCE

1. All defendants are hereby directed and demanded to preserve all physical and electronic information pertaining in any way to plaintiff's employment, to plaintiff's cause of action and/or prayers for relief, to any defenses to same, and pertaining to any party, including, but not limited to, electronic data storage, closed circuit TV footages, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages and any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, twitter, MySpace, etc.), and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.

2. Failure to do so will result in separate claims for spoliation of evidence and/or for appropriate adverse inferences.

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JURY DEMAND

Plaintiff hereby demands a trial by jury.

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RULE 4:5-1 CERTIFICATION

1. I am licensed to practice law in New Jersey and am responsible for the captioned matter.

2. I am aware of no other matter currently filed or pending in any court in any jurisdiction which may affect the parties or matters described herein.

COSTELLO & MAINS, P.C.

By: _____

Kevin M. Costello

DESIGNATION OF TRIAL COUNSEL

Kevin M. Costello, Esquire, of the law firm of Costello & Mains, P.C., is hereby-designated trial counsel.

COSTELLO & MAINS, P.C.

By: _____

Kevin M. Costello