

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY FLORIDA
CIVIL DIVISION**

COLLEEN JONES,

Case No.:

Plaintiff,

vs.

JOHNSON & JOHNSON VISION
CARE, INC., a Florida Profit Corporation,

Defendant.

_____ /

VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, COLLEEN JONES, (hereinafter “JONES” or “Plaintiff”), by and through the undersigned counsel, sues Defendant JOHNSON & JOHNSON VISION CARE, INC. (“Defendant” or “J&J”) and in support thereof alleges:

THE PARTIES

1. Plaintiff, COLLEEN JONES is resident of Duval County, Florida.
2. Defendant, J&J operates a large, specialized medical device business, selling directly to eye-care practitioners and retailers nationwide.

JURISDICTION AND VENUE

3. This is an action pursuant to the Florida Private Whistleblower’s Act, Section 448.102, Florida Statutes, for damages exceeding Fifteen Thousand Dollars (\$15,000) exclusive of attorneys’ fees and costs.
4. Jurisdiction and venue for purposes of this action are appropriate and conferred by Florida Statutes.
5. All violations alleged in the Complaint occurred in Duval County, Florida.

INTRODUCTION

6. For over twenty-five years, Plaintiff worked for Defendant, ultimately serving as the Director of Defendant's Vision Care Institute.

7. In 2017, after decades of dedicated employment, Ms. Jones' employment was abruptly terminated in violation of the Florida Private Whistleblower Act, Fla. Stat. §§448.102, *et seq.*

8. At all times material to this action, Defendant was, and continues to be a Florida Profit Corporation, conducting business at its worldwide headquarters located in Jacksonville, Duval County, Florida.

STATEMENT OF FACTS

9. J&J hired Plaintiff on January 20, 1992, as a sales representative.

10. Plaintiff continued to work for J&J for over twenty-five years, until November 2017.

11. Plaintiff was an excellent employee, and held thirteen positions of increasing responsibility during her over two-decade tenure with J&J.

12. Plaintiff was promoted nine times during her employment with J&J.

13. In each year of her employment, Plaintiff received a merit increase in her pay.

14. Plaintiff received a performance bonus in each year of her employment.

15. In her performance evaluations, Plaintiff received a rating of "meeting" or "exceeding" in each year of her employment.

16. At the end of her tenure with J&J, Plaintiff was the Director of The Vision Care Institute ("TVCI").

17. TVCI is licensed as an educational teaching facility.

18. Contact lenses are prescription medical devices.

19. As a teaching or education facility, TVCI is not licensed or authorized to distribute medical devices without a prescription and the authorization of a Florida licensed and certified optometrist.

20. All contact lenses used on subjects at TVCI are required to be removed from the subjects before departure.

21. In the months preceding Plaintiff's termination, Plaintiff became aware of, and reported, numerous violations of laws as well as J&J's own Health Care Compliance ("HCC") policies, being engaged in by providers and senior J&J employees and executives.

22. The list of conduct set forth in this Complaint is not exhaustive, but rather is illustrative of the 2017 complaints that Plaintiff made regarding J&J's repeated unlawful acts.

23. J&J's HCC policies are designed to ensure that J&J cooperates with federal and state laws regulating the healthcare field.

24. For example, Plaintiff observed and reported individuals not licensed to practice medicine in the State of Florida engaged in performing abbreviated examinations and providing prescription medical devices from TVCI to senior J&J executives, who removed the devices from TVCI's premises.

25. This was facilitated through a VIP Contact Lens Account, managed by the Professional Affairs Team, which coordinated this unlawful scheme through which J&J executives, including the Company Group Chairman and CEO, would receive prescription medical devices at no cost, without a complete eye examination or follow up, sometimes at a monthly or annual supply, which devices were received in and removed from TVCI.

26. Other J&J employees also received prescription devices, without a prescription or an exam by a licensed practitioner, through a system in which marketing teams had drawers filled with

the devices on a “grab and go” basis, where employees would simply take the devices at will.

27. Plaintiff reported the issue described in Paragraphs 19-23 in 2017, mere months before her termination.

28. These practices are in violation of applicable laws, including, but not limited to, Fla. Stat. § 484.001 *et seq.* and, specifically, Fla. Stat. § 484.013, and 21 C.F.R. § 801.109.

29. By way of further example, in 2017, Plaintiff received a request from her direct supervisor, Dr. Millicent Knight, to allow Dr. Stan Yamane, a friend of Dr. Knight’s, to use TVCI to do some filming for his company.

30. TVCI is not permitted to be provided for use by any customer or doctor other than for educational or teaching purposes by J&J.

31. Providing TVCI for use to a customer or doctor is against J&J’s policies.

32. Providing TVCI for use to a customer or doctor for use in their business would be considered a transfer of value.

33. Such a transfer of value is prohibited under the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(2).

34. Plaintiff informed Dr. Knight that allowing Dr. Yamane to use TVCI would be an unlawful transfer of value, and that same could not be authorized.

35. Dr. Knight permitted Dr. Yamane to use the facility despite Plaintiff’s analysis, and without telling Plaintiff, and circumventing established policies and procedures.

36. When Plaintiff learned of the violation involving Dr. Yamane, Plaintiff reported same in writing to J&J’s HCC Officer.

37. Plaintiff reported the violation described in Paragraphs 24-30 in 2017, only months before her termination, as well.

38. Also shortly before her termination, Ms. Jones objected to J&J's practice of transferring millions of dollars to associations and conventions, oftentimes without then having any J&J representation at those associations or conventions.

39. Payment by J&J at such level of sponsorship to an association or convention, without any corresponding attendance by a J&J representative, is not permitted under J&J's internal compliance policies.

40. Payment by J&J at such level of sponsorship to an association or convention, without any corresponding attendance by a J&J representative, resulted in the contributions far exceeding their Fair Market Value, which is not permitted under laws applicable to J&J governing unlawful kickbacks and gifts, including but not limited to 42 U.S.C. § 1320a-7b(b)(2)(B).

41. Most significantly, just one month before her termination, Plaintiff reported an unlawful scheme through which J&J uses money from its Marketing Trade Budget to surreptitiously and unlawfully *reimburse* J&J clients, including Target and LensCrafters, for services provided by third parties.

42. Payment by J&J for expenses which should be borne by clients who sell J&J products is an unlawful kickback, and also violates laws regarding unlawful transfer of value, including but not limited to 42 U.S.C. § 1320a-7b(b)(2)(B).

43. Merely one month after reporting this egregious violation of applicable anti-kickback laws, Plaintiff was summarily terminated in November 2017.

44. The reason Plaintiff was given for her termination was that her husband had provided a service to a J&J client, Target, and through him providing that service had improperly received money from J&J.

45. Even if true, if J&J did pay for the service that Target received, this would be an

unlawful kickback/gift/transfer of value to Target from J&J.

46. The total value of the transaction over which J&J alleges that it terminated Plaintiff after 25 years is less than \$2,000.00.

47. J&J did not take any action against other J&J employees who had not complained about unlawful activity, but whose friends and family members did business with J&J clients, or with J&J itself, as allegedly done by Plaintiff's husband.

48. Moreover, Plaintiff is aware of others who engaged in much more serious violations than that in which her husband was alleged to have engaged, against whom J&J took no action.

49. This specifically includes, but is not limited to, that Plaintiff is aware of a J&J investigation in 2013 which confirmed numerous instances of misappropriation of funds, fraud, and HCC violations, including over 230 non-business related charges using company funds in the most recent six months, forgery, false reporting in violation of the Sunshine Act, and numerous other violations.

50. However, the three individuals who had engaged in these unlawful acts were not terminated or prosecuted.

51. In fact, no one was terminated or prosecuted in connection with the unlawful acts uncovered in the 2013 investigation.

52. Instead, the incident was swept under the rug.

53. Prior to her 2017 reports of misconduct, due to other compliance violations Plaintiff had raised, Plaintiff had already been told to "De-Colleenify" her work and "loosen up" about compliance issues.

54. However, Plaintiff's refusal to obey this unlawful directive to ignore compliance issues, and her subsequent reports of several egregious violations of federal and State laws in mid to late 2017, were the direct cause of her termination.

55. If Plaintiff had not persisted in reporting and objecting to J&J's unlawful practices which violated both state and federal laws, she would still be working for J&J today.

COUNT I
RETALIATION IN VIOLATION OF FLA. STAT. §448.102
FLORIDA PRIVATE WHISTLEBLOWER ACT

56. Plaintiff re-alleges paragraphs 1 to 55 as fully set forth herein.

57. Plaintiff held a good faith belief that J&J was violating federal and state law, rules and regulations.

58. Plaintiff objected to J&J's unlawful conduct.

59. Plaintiff reported the violations of law and policy to J&J on multiple occasions.

60. After Plaintiff reported the unlawful conduct, J&J retaliated against Plaintiff by terminating her employment.

61. Florida Statute §448.102(3) expressly provides that an employer may not take any retaliatory action against an employee because the employee has: "Objected to, or refused to participate in, any activity, policy or practice of the employer which is in violation of a law, rule or regulation."

62. At all times material to this action, Plaintiff was an employee of Defendant within the meaning of Florida Statutes §448.101(2).

63. At all times material to this action, Defendant was an "employer" within the meaning of Florida Statutes §448.101(3) and regularly employed more than ten (10) persons.

64. Defendant violated Florida Statutes §448.102(3) by taking retaliatory personnel

actions against Plaintiff due to her complaints which she reasonably and in good faith believed to be violations of the Florida and federal law.

65. Defendant and/or its agents, managers, and supervisors actively and knowingly participated in the retaliatory actions taken against Plaintiff having actual knowledge and/or constructive knowledge of the wrongfulness of their conduct and the high probability that injury and/or damage to Plaintiff would result, and/or acted with such reckless disregard for, or with an absence of reasonable care, as to constitute a conscious disregard for, or indifference to, Plaintiff's statutorily protected rights, and/or acted with such gross negligence that Defendant contributed to Plaintiff's damages, injuries, and losses.

66. As a direct, proximate, and foreseeable result of Defendants' actions, Plaintiff has suffered past and future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, loss of dignity, severe emotional distress, humiliation, and other non-pecuniary losses and intangible injuries.

67. The decision to terminate Plaintiff was linked to Plaintiff's complaints about J&J'S's unlawful conduct.

WHEREFORE, Plaintiff, COLLEEN JONES, seeks the following damages against J&J:

- a. Back pay and benefits;
- b. pre and post-judgment interest on backpay;
- c. Front pay and/or lost earning capacity;
- d. Compensatory damages;
- e. Costs and attorney's fees; and
- f. For such other relief as the Court deems equitable.

JURY TRIAL DEMAND

PLAINTIFF hereby demands a jury trial for all issues so triable.

DATED this 17th day of October, 2018.

Respectfully Submitted,

/s/ ANGELI MURTHY

Angeli Murthy, Esquire

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Trial Counsel for Plaintiff

VERIFICATION

Pursuant to Fla. Stat. § 92.525, under penalties of perjury, I, **COLLEEN JONES**, declare, that I have read the foregoing **Complaint and Demand for Jury Trial**, and that the facts stated in it are true.

Dated: 08/27/18



COLLEEN JONES