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15 Attorneys for Plaintiff Tricia Mullins

16 UNITED STATES DISTRICT COURT  
17 SOUTHERN DISTRICT OF CALIFORNIA

18 TRICIA MULLINS, an individual,  
19 Plaintiff,  
20 v.

21 HORIZON PHARMA USA, INC.,  
22 a Delaware corporation; and DOES  
23 1 through 10, inclusive,  
24 Defendants.

25 CASE NO. **'18CV0399 BAS NLS**

26 Nature of Action – *Whistleblower  
27 Retaliation Claims*

28 **COMPLAINT FOR DAMAGES**

1. Retaliation in Violation of 31 U.S.C. § 3730(h)
2. Retaliation in Violation of Cal. Gov't Code § 12653
3. Wrongful Termination in Violation of Public Policy
4. Intentional Infliction of Emotional Distress

*DEMAND FOR JURY TRIAL*

**INTRODUCTION**

1  
2 1. This is an action by Plaintiff Tricia Mullins (“Plaintiff”) against her  
3 former employer, Defendant Horizon Pharma USA, Inc. (“Horizon Pharma” or “the  
4 Company”). As alleged in greater detail below, Plaintiff asserts that Horizon Pharma  
5 retaliated against her in violation of both federal law (31 U.S.C. § 3730(h)) and  
6 California law (Cal. Gov’t Code § 12653, and wrongful termination in violation of  
7 public policy) when the Company learned that she was a *bona fide* whistleblower that  
8 successfully had brought claims against a prior employer pursuant to the federal False  
9 Claims Act, 31 U.S.C. § 3729, *et seq.*, and various state-law false claims acts.  
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13 **PARTIES**

14 2. Plaintiff Tricia Mullins (“Plaintiff”) is a citizen of the United States who  
15 resides in Encinitas, California; and who has resided there at all times relevant to the  
16 claims in this action. Plaintiff has worked in pharmaceutical/biotech sales and patient  
17 advocacy for over twenty years, with significant experience in the rare disease space.  
18 Plaintiff was employed by Horizon Pharma in the position of Senior Director, Global  
19 Patient Advocacy from June 1, 2017, until she unlawfully was terminated by the  
20 Company effective December 8, 2017.  
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23 3. Defendant Horizon Pharma USA, Inc. (“Horizon Pharma” or “the  
24 Company”) is a Delaware corporation with its principal place of business in Lake  
25 Forest, Illinois. Horizon Pharma is a wholly-owned subsidiary of Horizon Pharma  
26 Public Limited Company (“Horizon Pharma plc”), and it is the American operating  
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1 subsidiary of the parent company, which is a public limited company organized under  
2 the laws of the country of Ireland, with its headquarters in Dublin, Ireland; and with  
3 offices in multiple countries, including the United States (California and Illinois).

4 According to its website, Horizon Pharma plc is “a global biopharmaceutical company  
5 with more than \$1 billion in net sales and over 1000 employees” that develops,  
6 acquires, and markets various medicines “through [its] rare disease, rheumatology and  
7 primary care units.” Horizon Pharma plc is publicly-traded on the NASDAQ stock  
8 exchange (ticker: HZNP) with a market capitalization of approximately \$2.3 billion as  
9 of February 20, 2018.

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13 4. Upon information and belief, Defendant DOES 1 through 10, inclusive,  
14 participated in some or all of the unlawful conduct alleged herein; or aided and abetted  
15 Defendants in the commission of some or all of their wrongful acts, or omissions to  
16 act, that are alleged herein; or otherwise are responsible for Plaintiff’s damages that are  
17 alleged herein. Plaintiff is ignorant of the true names and capacities of Defendant  
18 Does 1 through 10, inclusive, and therefore sues them by these fictitious names.  
19 Plaintiff will amend this Complaint to allege their true names when she discovers  
20 this information.  
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23 5. Unless otherwise stated herein, each Defendant was the agent, joint  
24 venturer, and/or employee of each of the remaining Defendants, and in doing the  
25 things alleged herein, each Defendant was acting within the course and scope of said  
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1 agency, joint venture, and/or employment with the advance knowledge, acquiescence,  
2 or subsequent ratification of each and every remaining Defendant.

3  
4 **JURISDICTION AND VENUE**

5 6. This Court has subject-matter jurisdiction over Plaintiff’s federal claim  
6 (Count I, *infra*) pursuant to 31 U.S.C. § 3730(h)(2) and 28 U.S.C. § 1331, and  
7 supplemental jurisdiction over Plaintiff’s related state-law claims (Counts II, III,  
8 & IV, *infra*) pursuant to 28 U.S.C. § 1367. In addition, and based on the diversity of  
9 citizenship of the parties and the amount in controversy (greater than \$75,000), this  
10 Court has jurisdiction over all claims in this action pursuant to 28 U.S.C. § 1332.  
11

12  
13 7. At all times relevant to this Complaint, Horizon Pharma regularly  
14 conducted substantial business within the State of California and within the jurisdiction  
15 of this Court. During the time that Horizon Pharma employed (and later terminated)  
16 Plaintiff – and at Horizon Pharma’s express direction – she was based out of her home  
17 office in Encinitas, California, which is within this Court’s jurisdiction. Based on the  
18 foregoing, Horizon Pharma is subject to personal jurisdiction in this Court.  
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20

21 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.  
22

23 **GENERAL ALLEGATIONS**

24 **A. Plaintiff’s Whistleblower Experience**

25 9. Several years prior to working for Horizon Pharma, Plaintiff was  
26 employed by Aegerion Pharmaceuticals, Inc. (“Aegerion”) from September 2012 to  
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1 April 2014. During her employment at Aegerion, Plaintiff was involved in the pre-  
2 launch and launch of an orphan disease medication called Juxtapid that was approved  
3 by the FDA to treat an ultra-rare genetic condition called Homozygous Familial  
4 Hypercholesterolemia (“HoFH”) that afflicts only one in a million people.  
5

6 10. While working for Aegerion, Plaintiff became aware, and was concerned,  
7 that Aegerion was unlawfully marketing Juxtapid beyond the FDA-approved label  
8 for the drug – so-called “off-label marketing.” In particular, Plaintiff learned that  
9 Aegerion was marketing Juxtapid outside of the narrow HoFH patient population by  
10 promoting the drug for off-label, non-FDA-approved, and potentially-dangerous  
11 medical uses. Put simply, Aegerion sought to market the drug to a larger (but not  
12 FDA-approved) patient population in order to vastly increase drug sales and the  
13 resulting profits.  
14  
15

16 11. Because Medicare and Medicaid were significant purchasers of Juxtapid,  
17 the off-label marketing by Aegerion resulted in numerous unlawful submissions to the  
18 federal and state governments for payment – *i.e.*, false claims.  
19

20 12. On July 26, 2013, Plaintiff (and two others) filed a whistleblower action  
21 against Aegerion pursuant to the *qui tam* provisions of the federal False Claims Act  
22 (“FCA”), 31 U.S.C. § 3729, *et seq.*, and various state-law false claims acts. The case  
23 was filed in the United States District Court for the District of Massachusetts, and it  
24 was captioned *United States, et al., ex rel. Clarke, Mullins, and Szudlo v. Aegerion*  
25 *Pharmaceuticals, Inc.*, Civil Action No. 13-cv-11785 (the “Aegerion FCA Case”).  
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1           13. Over the next several years, the government investigated the allegations  
2 set forth in the Aegerion FCA Case, including the central allegation that Aegerion  
3 unlawfully had been marketing Juxtapid “off label” for the treatment of non-HoFH  
4 patients. Ultimately, the government determined that the allegations had merit; and  
5 Aegerion admitted that it had done wrong.  
6

7           14. On September 22, 2017, the United States Department of Justice issued  
8 a press release confirming (1) that Aegerion had agreed to plead guilty to certain  
9 criminal charges, and (2) that Aegerion had agreed to pay \$28.8 million as part of a  
10 civil settlement that resolved, *inter alia*, the claims asserted in the Aegerion FCA Case.  
11 Plaintiff and the other two whistleblowers expressly were identified by name in the  
12 DOJ press release.  
13

14  
15 **B. Horizon Pharma Learns That Plaintiff Was an FCA Whistleblower**  
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17           15. That same day, September 22, 2017, one of Plaintiff’s counsel in the  
18 Aegerion FCA Case – *i.e.*, Royston H. Delaney of Delaney Kester LLP – sent a letter  
19 to Horizon Pharma advising the Company about Plaintiff’s involvement in the  
20 Aegerion FCA Case, and attaching a copy of the DOJ’s press release. The letter was  
21 sent via email and Federal Express overnight service to Irina Konstantinovskiy, the  
22 Chief Human Resources Officer of Horizon Pharma.  
23

24  
25           16. In his letter, Mr. Delaney explained that Plaintiff had “today [been]  
26 publicly recognized as a good-faith whistleblower under the Federal False Claims  
27 Act.” He also expressed his “hope that you are impressed and proud of [Plaintiff’s]  
28

1 contribution to the ongoing fight against fraud on government health care programs  
2 and on behalf of the health and welfare of patients across the United States.”

3 17. Next, Mr. Delaney expressly (and correctly) cautioned Horizon Pharma  
4 that “it is unlawful to retaliate against a whistleblower for taking steps to prevent  
5 waste[,] fraud and abuse under FCA, 31 U.S.C. § 3730(h).” He further explained:  
6 “The prohibition against such retaliation extends to anyone or any entity – for  
7 example, it is not just the employer who cannot retaliate against a whistleblower;  
8 indeed, *any subsequent employers also are barred from adverse employment*  
9 *actions.*” (Emphasis added.)

10 18. Mr. Delaney noted that: “Some unscrupulous employers seek to rid  
11 themselves of employees who prove to be uncompromisingly honest, public servants.”  
12 He then optimistically stated: “We hope and expect Horizon Pharma is no such  
13 employer and would instead value [Plaintiff’s] contribution on behalf of patients.”  
14 Unfortunately, Mr. Delaney’s optimism was dashed by Horizon Pharma soon  
15 thereafter.  
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21 **C. Horizon Pharma Retaliates Against Plaintiff**

22 19. Less than three months later, on December 8, 2017, Horizon Pharma  
23 unlawfully terminated Plaintiff in retaliation for her having been an FCA whistle-  
24 blower in the Aegerion FCA Case. The retaliatory nature of the termination is  
25 established by the following facts:  
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1           20. First, prior to her termination, Plaintiff had performed her job well and  
2 she repeatedly had received positive feedback from her immediate supervisors about  
3 her job performance.

4           21. Second, Horizon Pharma learned on September 22, 2017, that Plaintiff  
5 had been an FCA whistleblower in the Aegerion FCA Case.

6           22. Third, Horizon Pharma subsequently terminated Plaintiff ten weeks  
7 later based on the pretextual and false assertion that she allegedly had committed  
8 “misconduct.” In particular, Horizon Pharma falsely claimed that Plaintiff had  
9 violated her confidentiality agreement with the Company.  
10

11           23. In support of its confidentiality-breach allegation, Horizon Pharma  
12 purported to rely on statements by its Chief Compliance Officer, Timothy Ayers, who  
13 claimed to have overheard Plaintiff disclosing confidential information to her fiancé,  
14 Marc Riedl, M.D., while the three of them (Mr. Ayers, Plaintiff, and Dr. Riedl) were  
15 waiting to board an airplane from San Diego to Chicago just two days before on  
16 December 6, 2017.  
17

18           24. In fact, Plaintiff *did not disclose any confidential information* of the  
19 Company to Dr. Riedl. Plaintiff merely (and briefly) mentioned some publicly-  
20 available information about the Company – and such information is not confidential  
21 information subject to Plaintiff’s confidentiality agreement with the Company.  
22

23           25. It also is telling that when Plaintiff was told about her termination, Mr.  
24 Ayers presided over the meeting and personally informed Plaintiff that she was being  
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1 fired effective immediately; but he failed/refused to identify the statements made by  
2 Plaintiff at the San Diego airport that allegedly had included confidential information  
3 about the Company.

4  
5 26. The pretextual and retaliatory basis for Plaintiff's termination also is  
6 supported by the failure of Horizon Pharma to conduct any meaningful or thorough  
7 review of the underlying facts giving rise to Plaintiff's alleged breach of the  
8 confidentiality agreement. Instead, the Company peremptorily fired Plaintiff less than  
9 48 hours after her alleged misconduct. No warnings. No probation. No suspension.  
10 No investigation. No asking an available witness (Dr. Riedl) what he remembered  
11 having been said at the San Diego airport. The fix was in.  
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14  
15 **COUNT I**

16 *Retaliation in Violation of the Federal False Claims Act,*  
17 *31 U.S.C. § 3730(h) – Against All Defendants*

18 27. Plaintiff hereby realleges and incorporates the allegations of paragraphs 1  
19 through 26 above, inclusive, as though set forth fully herein.

20 28. As set forth in detail above, Horizon Pharma threatened, harassed,  
21 discriminated against, and terminated Plaintiff because of her lawful acts in  
22 successfully exposing violations of the federal False Claims Act by her prior employer,  
23 Aegerion. Any other ground for dismissing or disciplining Plaintiff was pretextual.  
24 By these actions, Horizon Pharma violated the False Claims Act, 31 U.S.C. § 3730(h).  
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1 back pay and lost bonuses (both doubled per statute), front pay, lost health insurance  
2 benefits, lost stock options, reputational injury – and emotional distress. Plaintiff also  
3 is entitled to recover prejudgment legal interest on her damages; exemplary and  
4 punitive damages; and litigation costs and reasonable attorneys’ fees.  
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6 33. Defendants’ conduct as alleged herein was done knowingly, maliciously,  
7 oppressively, and with conscious disregard for the rights of Plaintiff. Therefore,  
8 Plaintiff is entitled pursuant to Section 3294 of the California Civil Code to recover  
9 exemplary and punitive damages against Defendants in an amount to be determined  
10 at trial.  
11

12  
13 **COUNT III**

14 *Wrongful Termination in Violation of Public Policy*  
15 *Under California Law – Against All Defendants*

16 34. Plaintiff hereby realleges and incorporates the allegations of paragraphs 1  
17 through 33 above, inclusive, as though set forth fully herein.  
18

19 35. As set forth in detail above, Horizon Pharma terminated Plaintiff because  
20 of her lawful acts in successfully exposing violations of the federal False Claims Act  
21 and various state false claims acts (including the California False Claims Act) by her  
22 prior employer, Aegerion. Any other ground for dismissing or disciplining Plaintiff  
23 was pretextual. By these actions, Horizon Pharma terminated Plaintiff in violation of  
24 public policy under California law.  
25

26 36. As a direct and proximate cause of Defendants’ unlawful conduct,  
27 Plaintiff has been damaged in amounts to be proven at trial, but in any event, in excess  
28

1 of \$75,000. Plaintiff's damages include, but are not limited to, economic harm – *i.e.*,  
2 back pay and lost bonuses, front pay, lost health insurance benefits, lost stock options,  
3 reputational injury – and emotional distress. Plaintiff also is entitled to recover  
4 prejudgment legal interest on her damages; and litigation costs and reasonable  
5 attorneys' fees.  
6

7 37. Defendants' conduct as alleged herein was done knowingly, maliciously,  
8 oppressively, and with conscious disregard for the rights of Plaintiff. Therefore,  
9 Plaintiff is entitled pursuant to Section 3294 of the California Civil Code to recover  
10 exemplary and punitive damages against Defendants in an amount to be determined  
11 at trial.  
12  
13

#### 14 **COUNT IV**

##### 15 *Intentional Infliction of Emotional Distress* 16 *Under California Law – Against All Defendants*

17 38. Plaintiff hereby realleges and incorporates the allegations of paragraphs 1  
18 through 37 above, inclusive, as though set forth fully herein.  
19

20 39. Defendants' conduct as alleged herein was extreme and outrageous, and  
21 was engaged in with the intention of causing, or in reckless disregard of the probability  
22 of causing, severe emotional distress to Plaintiff.  
23

24 40. As a direct and proximate result of Defendants' extreme and outrageous  
25 conduct, Plaintiff has suffered damages in the form of severe emotional distress,  
26 humiliation, mental anguish, and trauma, in an amount to be established at trial.  
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1 The total damage amount exceeds \$75,000. Plaintiff also is entitled to recover  
2 prejudgment legal interest on her damages; and litigation costs.

3 41. Defendants’ conduct as alleged herein was done knowingly, maliciously,  
4 oppressively, and with conscious disregard for the rights of Plaintiff. Therefore,  
5 Plaintiff is entitled pursuant to Section 3294 of the California Civil Code to recover  
6 exemplary and punitive damages against Defendants in an amount to be determined  
7 at trial.  
8  
9

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff Tricia Mullins prays that the Court enter Judgment  
12 against Defendants as follows:  
13

- 14 1. With respect to Count I for Retaliation in Violation of 31 U.S.C.  
15 § 3730(h), Plaintiff prays for judgment against Defendants awarding her  
16 all available damages and relief including, without limitation: back pay  
17 and lost bonuses (both doubled per statute); front pay; lost health  
18 insurance benefits; lost stock options; reputational injury damages;  
19 emotional distress damages; compensation for all special damages she has  
20 sustained as a result of Defendants’ retaliation; prejudgment legal interest  
21 on all of the foregoing amounts; and her costs of suit and reasonable  
22 attorneys’ fees for prosecuting this claim;
- 23 2. With respect to Count II for Retaliation in Violation of Cal. Gov’t Code  
24 § 12653, Plaintiff prays for judgment against Defendants awarding her all  
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1 available damages and relief including, without limitation: back pay and  
2 lost bonuses (both doubled per statute); front pay; lost health insurance  
3 benefits; lost stock options; reputational injury damages; emotional  
4 distress damages; compensation for all special damages she has sustained  
5 as a result of Defendants' retaliation; prejudgment legal interest on all of  
6 the foregoing amounts; exemplary and punitive damages; and her costs of  
7 suit and reasonable attorneys' fees for prosecuting this claim;  
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9

10 3. With respect to Count III for Wrongful Termination in Violation of Public  
11 Policy Under California Law, Plaintiff prays for judgment against  
12 Defendants awarding her all available damages and relief including,  
13 without limitation: back pay and lost bonuses; front pay; lost health  
14 insurance benefits; lost stock options; reputational injury damages;  
15 emotional distress damages; compensation for all special damages she has  
16 sustained as a result of Defendants' unlawful termination; prejudgment  
17 legal interest on all of the foregoing amounts; exemplary and punitive  
18 damages; and her costs of suit and reasonable attorneys' fees for  
19 prosecuting this claim;  
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24 4. With respect to Count IV for Intentional Infliction of Emotional Distress  
25 Under California Law, Plaintiff prays for judgment against Defendants  
26 awarding her all available damages and relief including, without  
27  
28

1 limitation: emotional distress damages; medical expenses; prejudgment  
2 legal interest on all of the foregoing amounts; exemplary and punitive  
3 damages; and her costs of suit for prosecuting this claim; and  
4

5 5. In addition to the foregoing, Plaintiff prays for judgment against  
6 Defendants awarding her any and all other damages or relief that  
7  
8 the Court deems just and proper.

9 DATED: February 21, 2018

DELANEY KESTER LLP  
CHARLES F. KESTER  
ROYSTON H. DELANEY  
ILYAS J. RONA

13 By:           /s/Charles F. Kester            
14 Charles F. Kester

15 Attorneys for Plaintiff Tricia Mullins  
16 *charles@delaneykester.com*

17  
18 **DEMAND FOR JURY TRIAL**

19 Plaintiff Tricia Mullins demands a jury trial of all issues in this action.

20 DATED: February 21, 2018

DELANEY KESTER LLP  
CHARLES F. KESTER  
ROYSTON H. DELANEY  
ILYAS J. RONA

24 By:           /s/Charles F. Kester            
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