

\$1,320.00
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 14 2007

ALAN SLATER, Clerk of the Court
[Signature]
BY E. VELOZ *[Signature]*

6 Attorneys for Plaintiff
7 Kellie Ann Moore

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA** EV
9 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER** #36

10 KELLIE ANN MOORE,
11 an individual,
12
13 Plaintiff,

CASE NO. **07C C 06883**

Assigned To:
JUDGE RANDELL L. WILKINSON
Dept: DEPT. C 25

14 vs.

COMPLAINT FOR:

15 ANCHEN PHARMACEUTICALS, INC.,
16 a California corporation; CHIH MING
17 CHEN, an individual; and DOES 1-20,
18 Inclusive,

1. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY ;
2. BREACH OF CONTRACT;
3. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
4. PROMISSORY ESTOPPEL;
5. DEFAMATION;
6. SEX AND RACE DISCRIMINATION IN VIOLATION OF FEHA AND CALIFORNIA PUBLIC POLICY
7. RETALIATION;
8. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; and
9. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS.

19 Defendants.

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INVOICE

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3 COMES NOW Plaintiff KELLIE ANN MOORE (hereinafter "Plaintiff") for her causes
4 of action against ANCHEN PHARMACEUTICALS, INC., (hereinafter "Anchen") a California
5 corporation; CHIH MING CHEN, (hereinafter "Chen") an individual; and DOES 1-20
6 (hereinafter collectively, the "Defendants") hereby alleges the following:

- 7
8 1. Plaintiff KELLIE ANN MOORE, at all times mentioned herein, is an individual residing in
9 the County of Orange, State of California. At all relevant times herein, Plaintiff Moore was
10 an employee of Defendants.
- 11 2. Defendant ANCHEN PHARMACEUTICALS, INC. is a corporation operating in the State of
12 California.
- 13 3. Defendant CHIH MING CHEN is an individual with a residence in the County of Orange,
14 State of California.
- 15 4. Plaintiff is unaware of the names and capacities of those Defendants by the fictitious names of
16 Does 1 through 20, inclusive. Plaintiff is informed and believes that the fictitiously named
17 Defendants are responsible for the matters described in this Complaint. Plaintiff sues DOES 1
18 to 20 by fictitious names. Plaintiff will amend this Complaint to assert the true names and
19 capacities as they become known.
- 20
21 5. At all times relevant herein, Defendants were acting as agents and employees of each of the
22 remaining Defendants and were at all times acting within the purpose and scope of said
23 agency and employment.
- 24

25 **BACKGROUND FACTS**

- 26 6. Defendants hired Plaintiff Kellie Ann Moore on or about October 17, 2005 as a Director,
-- Legal Department and Corporate Counsel for the salary of \$110,000 per year.

- 1 7. Plaintiff worked in this capacity at Defendants' corporate office located at 5 Goodyear, Irvine,
2 California until her termination on or about April 13, 2006.
- 3 8. Plaintiff's job duties included coordination with outside counsel, preparing documents such as
4 contracts and records, supervising human resources and related employee matters, and
5 managing internal discovery for litigation.
- 6
- 7 9. Defendants first approached Plaintiff about a job in late January or early February 2005.
8 Defendant's employee, Margaret Choy, Vice President of Regulatory Affairs of Anchen,
9 contacted Plaintiff to inquire about her interest in assisting Anchen with some legal matters.
10 Plaintiff provided Ms. Choy with her resume and about a week later, Ms. Choy contacted
11 Plaintiff to set up a meeting with Defendant Chih Ming Chen, Ph. D., Anchen's Chief
12 Executive Officer and Chairman, as Choi told Plaintiff that Chen had been impressed with her
13 resume.
- 14
- 15 10. Plaintiff's first meeting was with Defendant Chen and Ms. Choy. Defendant Chen explained
16 Anchen's needs for an internal legal counsel to Plaintiff. Defendant Chen also discussed
17 Plaintiff's potential salary. Defendant Chen indicated that he could not offer much, but he
18 would make it up through stock options. While the official strike price at which the options
19 would be offered was not yet set, Defendant Chen informed Plaintiff that Anchen stock had
20 most recently been valued at \$1.40, indicating that Plaintiff would have the option to purchase
21 shares around this price. Defendant Chen specifically said that the stock options would make
22 all of them "rich" after the product launch. He explained to Plaintiff that Anchen was the first
23 to file the generic Abbreviated New Drug Application (ANDA) with the FDA for the
24 Wellbutrin generic. When Plaintiff asked what he meant by "first to file," Defendant Chen
25 responded that "it was like winning the lottery and worth a fortune."
26
11. Defendant Chen also told Plaintiff that he planned to take the company public with an IPO

1 right after the generic Wellbutrin launch and that everyone at the company wanted the IPO
2 and couldn't wait for the IPO to happen. Defendant Chen told Plaintiff that he had previously
3 gone through an IPO when he was at Andrx and that everyone who worked for Andrx before
4 the IPO made "a lot of money" as they had shares and stock options before the IPO.
5 Defendant Chen also made reference to Impax and said the staff there made "a lot of money"
6 with their IPO as well. He told Plaintiff she should look at the Andrx and Impax company
7 histories to see what he meant.
8

9 12. At Defendant Chen's request, Plaintiff researched the companies that he referred to. Plaintiff
10 saw that shares initially offered at \$12 each were worth between \$50-75 only a few years after
11 the IPO. Based on Defendant Chen's statements and the history of Andrx and Impax, which
12 Defendant Chen had referred her to, Plaintiff understood that the Anchen stock options
13 offered to her at about \$1.40 per share would be worth \$50 to \$75 in a few years, possibly
14 even more, as Andrx had not had "first to file" status on its early ANDA filings.
15

16 13. In a subsequent interview, Plaintiff met with some management level employees including
17 Jonathan Chang (Anchen's CPA, Acting CFO and Board Member), Domingo Tan (VP of
18 Formulation & Product Development), Connie Chang (VP of Quality Assurance), and John
19 Mooney, Esq. (outside counsel from Winston & Strawn).
20

21 14. Each person asked questions about Plaintiff's experiences with the generic industry,
22 pharmaceutical industry, and law practice.

23 15. Mr. Mooney indicated that Plaintiff was indeed qualified, and that her background (which did
24 not include patents or the generic drug industry) would not pose any problems.
25 Mr. Mooney said it would take some time for her to learn Anchen's needs, but since she had
26 seven years pharmaceutical industry experience and a litigation background, she would
-- understand the generics and patent litigation practice relatively quickly. Mr. Mooney

1 estimated that it would take about six months to get up to speed on the patent litigation
2 matters. Mr. Mooney said the same thing directly to Defendant Chen in Plaintiff's presence at
3 a later time.

4
5 16. Defendant Chen told Plaintiff that she should treat her first six months at Anchen as a learning
6 period. Defendant Chen furthermore said he thought Anchen's legal needs would increase in
7 six months time given the number of additional ANDAs to be filed and patents litigated.

8 17. During the interview, Plaintiff's living situation was also discussed. After discussing the
9 commute to Irvine from Torrance, where she lived at the time, the management team strongly
10 recommended that she relocate from Los Angeles to Orange County to be closer to the
11 Anchen facility. Plaintiff informed them that she had spoken with her husband about possibly
12 moving to Orange County as he worked for a company in Redondo Beach. Both Plaintiff and
13 her husband agreed that if she were employed by Anchen they planned to move to Orange
14 County as Anchen presented a great long term career opportunity. As such, Plaintiff's
15 husband agreed to accept his new 3 to 4 hour daily commute schedule for the benefit of his
16 wife's job and career at Anchen.

17
18 18. Shortly after this meeting, Plaintiff received a phone call from Ms. Choy. She told her that
19 Defendant Chen was very interested in hiring her but was concerned that he could not meet
20 her salary expectations. Ms. Choy then asked what Plaintiff's current salary and bonus
21 expectations were at the law firm. At the time Plaintiff was earning \$110,000 annually,
22 expected a \$5,000 bonus for 2005, as well as vesting in the firm's profit sharing program.

23
24 19. Additionally, Plaintiff communicated to Ms. Choy the career ramifications of leaving a law
25 firm to accept employment in a company. Plaintiff explained that once an attorney leaves the
26 law firm environment, law firms are no longer eager to hire such an attorney whose career
-- interests may not include the law firm partnership track. Ms. Choy said she understood the

- 1 importance of such a decision and would get back to Plaintiff.
- 2 20. During the next conversation, Ms. Choy informed Plaintiff that Anchen could not meet her
3 salary, but inquired as to whether Plaintiff would be interested in working part time. Plaintiff
4 looked into this as a possibility, but it was soon determined that it was not economical for
5 Anchen and furthermore, would create a conflict of interest for Plaintiff's employer, Bowman
6 and Brooke LLP.
- 7
- 8 21. On September 21, 2005, Defendant Chen phoned Plaintiff and offered to match her current
9 salary and grant her more stock options than typically given for a Director level position at
10 Anchen. Defendant Chen further promised that when Anchen was making money, he would
11 increase her salary.
- 12
- 13 22. Defendant Chen followed up that same day with an offer letter via email. Plaintiff's offer
14 included 30,000 stock options and the chance to buy an additional \$30,000 worth of stock,
15 which was a significant incentive and inducement involving 15,000 more stock options
16 compared to other employee offers for the same salary level.
- 17
- 18 23. In light of the offer containing a significant number of stock options, which Defendant Chen
19 had assured Plaintiff would be extremely valuable, Plaintiff signed and returned the letter to
20 Defendant Chen the same day.
- 21
- 22 24. Plaintiff noticed that her offer letter did not contain any implication that her employment was
23 at-will; nor did Defendant Chen give her any indication that he intended her employment to
24 be at-will throughout negotiations. Further, prior to the beginning of her employment,
25 Defendant Chen began copying Plaintiff on internal emails to get her acquainted with the
26 company. One email contained an offer letter to another employee at the same salary level
-- that did contain notice of at-will employment. This further confirmed Plaintiff's belief that
her employment was not meant to be at-will.

- 1 25. In anticipation of her new position, Plaintiff and her husband, Shawn Gordon, began
2 looking into purchasing a home closer to Irvine. Because Anchen management had
3 expressed concern about Plaintiff commuting from Los Angeles to Irvine as the commute
4 would likely average about an hour and a half one way.
5
6 26. Escrow closed on the Moore-Gordon's new home in the end of September and they
7 moved to Orange County in October 2005.
8
9 27. The Moore-Gordon's also accepted an offer in selling their Los Angeles home towards the
10 end of October. Although the offer was lower than what they otherwise would have
11 accepted, they felt pressure to accept the offer due to the tight timeline set by the move to
12 Orange County for Plaintiff's new position.
13
14 28. Even with accepting the low offer on their Torrance home sale, the Moore-Gordon's had
15 to pay two mortgages for two months while waiting for their home sale to close.
16
17 29. Although no moving costs or reimbursements were offered to Plaintiff as part of her
18 employment package, she later discovered that Chinese employees at the Director level
19 had been paid \$30,000 at a minimum for moving expenses.
20
21 30. Plaintiff started her new position with Anchen in October 2006.
22
23 31. In January or February 2006, Defendant Chen approached Plaintiff to discuss his
24 questions about pending litigation matters. After discussing the procedure and strategy,
25 Defendant Chen asked Plaintiff, "When will you have a baby?" Plaintiff was stunned by
26 his completely unexpected and inappropriate question. She had only been an employee of
-- Anchen for a few months when her boss asked her this extremely personal and intrusive
question. After stammering a bit, Plaintiff replied "I don't know."
32. Defendant Chen continued to tell Plaintiff that his current girlfriend was around her age,
and that she wanted to get married, and Defendant Chen did not want to get married again

1 as his last marriage ended in divorce. Defendant Chen told Plaintiff that his girlfriend was
2 bugging him about having a baby as well we she was around Plaintiff's age, was getting
3 older and she said her time to have children was running out. Defendant Chen was well
4 aware that Plaintiff was in her mid-thirties and his questioning implied that he thought
5 Plaintiff's time for children was running out as well.
6

7 33. Shortly after Defendant Chen left her office, Plaintiff went home feeling physically sick as
8 a result of Defendant Chen's prying personal questions.

9 34. On or around the next day, Plaintiff informed the Human Resources Manager Linda Lee
10 and other executive employees of Defendant Chen's inappropriate questions. The Human
11 Resources Manager's actual response was to ask Plaintiff, "What are you going to do?"
12 After relating the encounter to Margaret Choy, the VP of Regulatory Affairs, Choy told
13 Plaintiff that "there's no excuse" for such personal questions, yet took no action to ensure
14 it did not happen again.
15

16 35. Other employees also asked Plaintiff personal questions on an unusual frequency. Given
17 the familial closeness of Anchen and the number of employees related to and dependent
18 on Defendant Chen for their personal welfare, Plaintiff suspects that at least the majority
19 of the questions were asked at Defendant Chen's request in order to determine Plaintiff's
20 future plans and "dedication" to the company. Defendant Chen held the belief that a
21 woman with children simply could not be completely dedicated to her work. For
22 example, Ms. Monica Wang, Defendant Chen's niece, questioned Plaintiff about her
23 personal affairs and plans such as whether Plaintiff's mother was pressuring her for
24 grandchildren.
25

26 36. Defendant Chen also asked Plaintiff to set him up with her girlfriends. One day in
November/December, Defendant Chen walked into her office and asked if she had any

1 girlfriends around her age who were single. Plaintiff was confused by the question, so
2 Defendant Chen continued that he would be interested if she had any girlfriends around
3 her age, who were intelligent and pretty. Clearly uncomfortable about the request from
4 her boss and CEO of the company, Plaintiff simply told him she would have to think
5 about it.
6

7 37. Plaintiff thought that would be the end of the awkward request, but only about a week
8 later, Defendant Chen's niece, Ms. Wang entered her office, referenced Defendant Chen's
9 request regarding female and dates and also asked Plaintiff if she had any single
10 girlfriends who would be a good match for Defendant Chen. Plaintiff is informed and
11 believes that Defendant Chen had sent his niece to follow up on his inappropriate request.
12

13 38. Plaintiff told Ms. Wang the same thing that she had told Defendant Chen: she would have
14 to think about it.

15 39. Despite two women besides Plaintiff holding managerial/executive positions within the
16 company, Plaintiff was typically the only female included in company business plan or
17 strategy meetings. Plaintiff was typically only included because Mr. Mooney would ask
18 that she be brought in. Defendant Chen only asked Plaintiff to attend meetings if he
19 thought she "needed to know" what was going on as in-house counsel.
20

21 40. Defendant Chen also made a usual practice of continuing business discussion outside of
22 the office by suggesting dinner meetings at local high-end restaurants. It was well known
23 that Defendant Chen always picked up the entire dinner tab. Females were rarely, if ever,
24 invited to join these dinners.

25 41. Defendant Chen also often referred to men's wives with various disparaging comments,
26 usually in reference to a man's need to "tolerate" his "boss" referring to the brow-beating,
27 bossy, demanding wife/woman in his life.

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42. Defendant Chen and CFO, Mr. Jonathan Chang also shared a similar view on a woman's function and role within the company. Both rarely interacted with females on a professional level or treated females as even close to their equivalent. It was clear that they viewed women as most suitable for secretarial and clerical functions, not professional roles.

43. For example Defendant Chen hired multiple levels of senior management for the laboratory and its operational management. All senior management hired for the laboratory were male. In contrast, almost all of the staff under the managers were women.

44. When Defendant Chen and Mr. Jonathan Chang left the office at the end of the day, they said goodbye to the male staff, but did not speak to the females unless they were spoken to first.

45. For example, the regular receptionist at Anchen was a female, but a male, Daniel, took her place when she was not at the office. Mr. Jonathan Chang told Plaintiff he did not want Daniel at the front desk. He claimed that Daniel sometimes worked on private matters, but the female receptionist also worked on sensitive and proprietary license applications in plain view of vendors and visitors, including competitors who were also business partners, in the reception area, which are private, so it was clear that Mr. Jonathan Chang's reason was pretextual.

46. Defendant Chen also believed that if Plaintiff did not agree with him on any particular matter it was because she was Caucasian and therefore "did not understand" Chinese business practices. This became apparent to Plaintiff shortly after her hire and created considerable difficulty in performing her duties. Plaintiff was often berated by Defendant Chen in public for her opinions even when other employees agreed with her.

47. In addition to Plaintiff, several other employees had been promised incentive stock

1 options at hire. In November, Mr. Jonathan Chang asked Plaintiff to prepare the incentive
2 stock option agreements with a strike price of \$3.00, despite an independent professional
3 valuation only six months earlier valuing the shares at \$1.40. Mr. Chang claimed that the
4 May valuation was based only on data through December 2004 and then determined on
5 his own that anticipated future ANDA filings would more than double the value. Mr.
6 Chang refused to provide any data or documentation for the corporate files supporting his
7 valuation, nor would he provide any more than a vague explanation. Defendant Chen and
8 Mr. Chang made it perfectly clear to Plaintiff that she should do as she is told and not
9 question their decisions.
10

11 48. Mr. Tom Nimmer was hired by Anchen in February 2006 shortly after Plaintiff, on
12 Plaintiff's recommendation. Hired as the VP of Compliance & Project Management,
13 Mr. Nimmer became Plaintiff's immediate supervisor. Following his hire, Mr. Nimmer
14 met with Defendant Chen regarding Plaintiff's responsibilities.
15

16 49. Defendant Chen expressed his expectation and disappointment that Plaintiff was not
17 involved with the large amount of business development and business collaboration that
18 he had in mind when he hired Plaintiff. When Mr. Nimmer asked Defendant Chen if he
19 had communicated to Plaintiff what he expected of her, Defendant Chen said that he had
20 not.
21

22 50. Defendant Chen continued saying that if Plaintiff were Chinese she would know what he
23 wanted and that not being Chinese, she does not understand how Chinese do business.
24

25 51. On another occasion, Ms. Choy told Plaintiff that Defendant Chen had told her that he did
26 not think Plaintiff fit in at Anchen. Defendant Chen further stated that since Plaintiff is
white, she did not understand the Chinese culture. Ms. Choy told Defendant Chen that he
needed to give Plaintiff time to understand the Chinese culture.
--

1 52. It also became clear that as a Caucasian woman, Defendant Chen did not respect
2 Plaintiff's opinion. In fact, both Mr. Nimmer and Plaintiff noticed that Defendant Chen
3 would listen to very little of what Plaintiff said, but if Mr. Nimmer said the exact same
4 thing, Defendant Chen would listen and enthusiastically adopt the information or
5 suggestion. Even though Mr. Nimmer is Caucasian, Mr. Chen viewed Mr. Nimmer as
6 Chinese as Mr. Nimmer speaks Chinese, is married to a Chinese lady and owns a vacation
7 home in China. In fact, Defendant Chen made a formal presentation when he introduced
8 Mr. Nimmer at an all-Anchen staff meeting whereby he spoke in Chinese and called Mr.
9 Nimmer the "son in law of China."
10

11 53. In an attempt to get Defendant Chen to listen to and consider Plaintiff's advice, Plaintiff
12 and Mr. Nimmer agreed to allow Mr. Nimmer to act as her mouthpiece. Plaintiff began
13 sending emails to Mr. Nimmer who then relayed the information to Defendant Chen,
14 whereupon Defendant Chen began to adopt Plaintiff's suggestions, through Mr. Nimmer.
15 Plaintiff would not have had to go to these lengths had she been male or Chinese.
16

17 54. As the acting head of human resources, Plaintiff also began to institute a standardized
18 process for hiring new employees. If a manager wanted to hire a particular person, they
19 sent an email to Plaintiff with the details of the proposed offer. Plaintiff prepared the offer
20 letter and would forward it back to the hiring manager for review, copying Monica Wang
21 in accounting, her supervisor Mr. Nimmer and Mr. Chen. Once Mr. Chen accepted the
22 proposed offer, Plaintiff emailed the candidate the offer letter with benefits and handbook
23 information.
24

25 55. On one particular occasion, Plaintiff had been waiting for approval on four separate offer
26 letters. Defendant Chen instructed Plaintiff, in the presence of Mr. Nimmer, to send them
all out that day and Plaintiff did so. However the very next day, Defendant Chen stormed

1 into Plaintiff's office in a rage asking why she had sent one of the letters. Defendant Chen
2 then shouted from the hallway to other employees that "[she] never follows instructions"
3 and he never told her to send out the offer letter to Nai Dong.
4

5 56. Later when Mr. Nimmer attempted to privately explain to Defendant Chen that Plaintiff
6 had indeed simply followed his instructions that he himself heard Defendant Chen
7 communicate to her, Defendant Chen replied "she just doesn't understand," implying that
8 because she was Caucasian and not Chinese, she did not understand what he wanted.

9 57. In February 2006, Anchen began to consider hiring another senior level employee who
10 was currently employed by a direct competitor, for a position as Anchen's Director of
11 Validation & Facilities Management.
12

13 58. On February 15, 2006, Mr. David Balucci's resume was forwarded to Plaintiff and
14 Defendant Chen, by Mr. Domingo Tan, VP of Product Development. Plaintiff asked
15 whether an interview should be scheduled, but contrary to regular practice, both
16 Defendant Chen and Mr. Tan made it clear that they did not want to interview Mr. Balucci
17 but rather wanted to hire him right away.
18

19 59. Around March 1, 2005, Plaintiff prepared and sent the standard offer letter to Mr. Balucci
20 which had been reviewed and approved by Mr. Tan, Mr. Chen, and Mr. Nimmer. Mr.
21 Balucci then returned a revised version of the offer letter, adding on his own extremely
22 favorable terms and removing the customary protective terms that are normally included
23 in Anchen's standard offer letters.

24 60. Additionally, Mr. Balucci included one term that would allow him to telecommute,
25 performing duties as the Facilities Manager from his home three times a week. No other
26 Anchen employees had this kind of benefit. Ms. Choy and Mr. Nimmer questioned Mr.
27 Balucci's ability to adequately perform his responsibilities of directing the day-to-day

1 facilities operations of two manufacturing plant buildings, including the new
2 manufacturing plant for the critical Wellbutrin generic product launch, via a
3 telecommuting arrangement. Additionally, both Mr. Chang and Ms. Wang of the
4 accounting department said they were not comfortable with this telecommuting
5 arrangement due to the liability and confidentiality issues as well as its precedent-setting
6 significance. However, Mr. Tan accepted the changes and demanded that Plaintiff send
7 Mr. Balucci the new offer letter version that day.
8

9 61. Given the unusual perks Mr. Balucci was offered and the urgency with which Defendant
10 Chen and Mr. Tan wanted to hire Mr. Balucci, Plaintiff, as well as Mr. Nimmer, Ms.
11 Choy, and Mr. Jonathan Chang expressed concern that Mr. Balucci was being hired
12 because of the clandestine moonlighting work he had already performed for Anchen prior
13 to receiving his employment offer. Specifically, Mr. Balucci had been a full-time
14 managerial employee of Anchen's competitor, but moonlighted simultaneously as a well-
15 paid consultant for Anchen. It appeared that Anchen was attempting to pay off Mr.
16 Balucci for the work he had already done and ensure that his prior involvement and
17 knowledge would not cause any future problems for Anchen with its ANDA filings,
18 generic Wellbutrin product launch, the upcoming FDA inspection, licensure or operation
19 of its new manufacturing plant.
20
21

22 62. Since 2004, Mr. Balucci had designed validation protocols, performed validation studies,
23 documented validation data and personally prepared and signed the validation reports
24 submitted by Anchen to FDA. Mr. Balucci utilized its competitor company's validation
25 protocols and methods on Anchen's manufacturing equipment in order to expedite the
26 acquisition of certain key data and the facility licensure.

63. In fact, when FDA inspected Anchen's R&D facilities and reviewed the validation

1 documentation, the FDA inspector recognized Mr. Balucci's signature on the reports and
2 queried Anchen about the signature, as the FDA inspector knew Mr. Balucci was currently
3 an employee of the competitor company. FDA's recognition of Mr. Balucci and
4 knowledge of Mr. Balucci's employment associations made Defendant Chen and Mr. Tan
5 extremely nervous as they feared such information could jeopardize their business and
6 product launch plans as well as the approval of the critical new manufacturing plant.
7 Without a licensed manufacturing plant, Anchen would not be able to manufacture and
8 launch its generic version of Wellbutrin.
9

10 64. Further, the competitor company's president, as well as another generic pharmaceutical
11 company president, had directly contacted Defendant Chen and requested that he stop
12 stealing management employees from their respective companies. Margaret Choy, Wen
13 Sun, William Poon and Domingo Tan, all current management level employees of
14 Anchen, had previously been employed by competitor companies and had brought
15 valuable business information with them. Thus, there was considerable concern that
16 hiring another employee from this direct competitor, especially with unusual employment
17 terms, an inflated salary, moonlighting history and restrictive conditions attached to his
18 prior employer, could result in a dispute with the competitor company.
19
20

21 65. After receiving Mr. Balucci's revised and edited version of the offer letter, Plaintiff spoke
22 to fellow Anchen employees and learned that they too questioned the hiring of
23 Mr. Balucci for a number of sensitive reasons. Based on his resume, neither Mr. Nimmer,
24 Ms. Choy, nor Mr. Jonathan Chang thought Mr. Balucci was qualified for the position for
25 which he was recommended, and all expressed concern about the confidentiality, non-
26 disclosure and non-compete agreement Mr. Balucci signed as a managerial level
employee of the competitor company. The agreement expressly forbid managerial staff

1 from working, consulting or moonlighting in a similar capacity or technical area as
2 employed by the competitor for any competitor of the company.

3 66. Furthermore, after Mr. Nimmer researched the local public salary range data for the
4 position contemplated, Mr. Nimmer informed Mr. Tan and Defendant Chen that their
5 suggested salary of \$110,000 was about \$30,000 more than the local industry average for
6 an extremely qualified person to fill the position.
7

8 67. Mr. Nimmer, Ms. Choy, and Mr. Jonathan Chang and Plaintiff all expressed their fears
9 that a dispute with the competitor company over an alleged theft of the competitor's
10 proprietary business information, trade secrets or other confidential information could
11 jeopardize Anchen's launch of their generic Wellbutrin product.
12

13 68. Hiring a competitor's full time staff in a moonlighting capacity was not a standalone
14 incident at Anchen. To the contrary, Plaintiff discovered that Anchen historically has
15 knowingly pursued, engaged, and paid management level employees from its competitors
16 while the same employees worked simultaneously as full-time employees of a competitor
17 company. By soliciting competitors' employees for moonlighting consulting services,
18 Anchen received a windfall of valuable technical, business and trade secret information
19 that it would not have had access to otherwise.
20

21 69. For instance, Anchen hired Mr. Tan to design an R&D facility for Anchen's development
22 work. Mr. Tan designed such an R&D facility in close replication of the the competitor
23 facility. To achieve this objective, Mr. Tan engaged the business, contacts and technical
24 knowledge of the competitor's API sourcing, equipment procurement, manufacturing and
25 product development facilities for Anchen's benefit.

26 70. Knowing the R&D facility required FDA licensure, Mr. Tan directly contacted
-- Mr. Balucci as Mr. Balucci could access and apply the competitor's historical validation

1 protocols and techniques to Anchen's facility. As the competitor's manufacturing
2 facilities were already FDA inspected, reviewed, licensed and operational, the
3 competitor's historical information could expedite Anchen's qualifying validation studies
4 and thus the critical FDA approval process.

5
6 71. To expedite Anchen's generic Wellbutrin ANDA, Mr. Tan solicited Ms. Margaret Choy to
7 moonlight as a paid regulatory consultant. At the time Ms. Choy worked on Anchen's
8 generic Wellbutrin ANDA, Ms. Choy was the current Director of Regulatory Affairs for a
9 competitor company.

10 72. As Ms. Choy knew that working on a competitor's ANDA breached her contract with her
11 employer, Ms. Choy agreed to work on Anchen's ANDA clandestinely only if Anchen
12 paid her husband, Allen, instead of her for her regulatory advice and services. Anchen
13 indeed paid Allen "for accounting services," however Allen only recently received
14 authorization to lawfully work in the United States according to his visa status in the early
15 months of 2006.

16
17 73. Additionally, as a former competitor company managerial level employee himself, Mr.
18 Tan would have known that the competitor company required all managerial level
19 employees to routinely sign the confidentiality, non-compete, non-disclosure agreement as
20 a condition of their employment.

21
22 74. Mr. Tan and Ms. Choy also knew that both Anchen and the competitor company were
23 simultaneously working towards the same goal and both desired to be the first to develop
24 and file the generic Wellbutrin ANDA with the FDA.

25 75. Mindful of the many concerns surrounding the hire of Mr. Balucci, including the
26 circumstances just related, rather than immediately issue the offer letter as Mr. Tan had
-- told her, Plaintiff respectfully requested that management first discuss the implications of

1 the changes that Mr. Balucci had made to the letter. Mr. Nimmer agreed with Plaintiff
2 that the changes were not desirable and specifically told Mr. Tan and Defendant Chen in a
3 strongly worded correspondence that he would not support the revisions for a number of
4 clearly articulated reasons.

5
6 76. Mr. Nimmer and Ms. Choy both vocalized to Plaintiff that they did not trust
7 Mr. Balucci, as he had worked for Anchen while employed with the competitor company
8 and there was no reason why he would remain loyal to Anchen. Given the telecommuter
9 status Anchen was granting Mr. Balucci, it would be considerably easy for him to draw an
10 Anchen salary and work for other companies on the side, potentially sharing Anchen's
11 own trade secrets.

12
13 77. However, Jonathan Chang and Defendant Chen's response to Plaintiff and the other
14 Anchen employee concerns was that Anchen could always fire Mr. Balucci later on after
15 the Wellbutrin generic launch, after second plant was operational and FDA licensed.

16 78. Later that day a meeting was held with Defendant Chen, Mr. Tan, Mr. Nimmer, and
17 Plaintiff in attendance. Defendant Chen was visibly enraged and in front of everyone
18 screamed at Plaintiff until he was red in the face. Defendant Chen accused Plaintiff of not
19 following directions. Defendant Chen further defamed Plaintiff's professional reputation
20 shouting how she did not know corporate law and how Tim Chang (Defendant Chen's
21 personal attorney) said that too. Defendant Chen told her that she created a bureaucracy
22 and delayed things. Defendant Chen yelled about how she caused trouble and needed to
23 be supportive of his VP's. As she believed it to be unlawful and in violation of her
24 professional ethical standards, Plaintiff respectfully refused to sanction the offer as revised
25 by Mr. Balucci.
26

79. Following this incident, Mr. Jonathan Chang and Defendant Chen told Plaintiff not to

1 work on any other corporate matters, stock issues, or human resources issues and to focus
2 solely on litigation. Despite the fact that several employees expressed opposition to hiring
3 Mr. Balucci and the terms of his employment, Plaintiff was the only employee Defendant
4 Chen punished.
5

6 80. Up until April 13, 2006, Plaintiff performed her job to the satisfaction and praise of her
7 superior, Mr. Nimmer, without incident. However, on April 13, 2006, Defendant Chen
8 entered Plaintiff's office and asked if he could speak with her. Defendant Chen shut
9 Plaintiff's door and said things just weren't working out and he was going to let her go.
10 This was less than six months after her start date.
11

12 81. Plaintiff then asked Mr. Nimmer to come into the office. The conversation continued
13 once Mr. Nimmer arrived.

14 82. Defendant Chen stated that it should not be a surprise that he was firing her. Plaintiff
15 responded that indeed his firing was a surprise as she had no notice, no warning, and
16 absolutely no knowledge whatsoever that Defendant Chen planned to terminate her. She
17 had been receiving regular assignments from Mr. Nimmer and Mr. Jonathan Chang. Mr.
18 Nimmer had still been working with Defendant Chen to help him articulate exactly how
19 Defendant Chen envisioned Plaintiff's position, as no job description had ever been given
20 to her and it had become clear that Defendant Chen did not properly communicate with
21 Plaintiff.
22

23 83. Defendant Chen went on to say "I should have fired you, you know, back on that
24 day....remember back in my office?" Plaintiff responded "You mean regarding Balucci?"
25 Defendant Chen replied "Yes." By this, Defendant Chen was referring to the Dave
26 Balucci offer letter that Plaintiff refused to approve.
--

84. Defendant Chen then further claimed that he was eliminating her position as there was not

1 enough work for her to do. However, Anchen's anticipated legal needs were in fact
2 increasing and legal expenses were expected to exceed \$300,000 per month for ongoing
3 litigation. Additional litigation was further anticipated for each additional ANDA filed.
4 Furthermore, Plaintiff is informed and believes that her termination was, in part motivated
5 by her knowledge of and disagreement with business practices that were unlawful and
6 contrary to professional ethical standards.
7

8 85. When Plaintiff reminded Defendant Chen that she had a contract with the Company,
9 Defendant Chen replied in anger by stating that she should "not make trouble" as he "can
10 be a scrappy Taiwan street fighter...you know that...." He further went on to promise
11 that he "could make [Plaintiff's] life very uncomfortable [at Anchen]." Plaintiff then left
12 the office.
13

14 86. On or about June 15, 2006, Plaintiff exhausted her administrative remedies by filing a
15 complaint with the California Department of Fair Employment and Housing related to the
16 discrimination she suffered. On or about June 15, 2006, Plaintiff served her Right to Sue
17 Notices on Defendants.
18

19 87. Plaintiff also lost numerous other fringe benefits due to his termination, including a life
20 insurance plan and 401(k) plan with which he had previously contributed to while
21 employed by Defendants.
22

FIRST CAUSE OF ACTION

Termination in Violation of California Public Policy

24 88. Plaintiff hereby incorporates paragraphs 1 through 87 as though fully set forth herein.

25 89. Under California law, an employee may bring a claim against her employer for wrongful
26 termination when the termination violated "an express statutory objective or undermined a
firmly established principle of public policy." *Tameny v. Atlantic Richfield Co.* (1980) 27

1 Cal.3d 167, 172. Theft of trade secrets or knowingly receiving or possessing stolen trade
2 secrets has been made a federal crime under 18 USC 1832. Criminalizing the conduct
3 reflects the strong public policy in favor of protecting trade secrets. It follows that
4 retaliating against an employee who refuses to sanction or participate in conduct she
5 believes would further or otherwise reward trade secret theft violates public policy.
6

7 90. Only weeks prior to her termination, Plaintiff had refused to sanction the hiring of Mr.
8 David Balucci. The unconventional and extremely favorable employment terms that had
9 been granted to Mr. Balucci made the employment offer appear to be more of a pay off to
10 Mr. Balucci for his past "assistance" than a legitimate job offer. This, coupled with
11 Anchen's record of luring employees of competitors and benefiting from their knowledge,
12 led Plaintiff to believe that employing Mr. Balucci had more to do with his knowledge of
13 trade secrets than his personal skills that he could bring to Anchen.
14

15 91. As Plaintiff did not want to be involved with any activity that could be construed as
16 unlawful, she refused to sign the offer letter sent to Mr. Balucci. Defendant Chen made it
17 clear that he had this incident in mind when he terminated her in April 2006.
18

19 92. Terminating Plaintiff in retaliation for refusing to participate in conduct that promotes
20 trade secret theft violates the public policy of the state of California, and may be in
21 violation of certain FDA regulations, Cal OSHA requirements, as well as California
22 securities laws and Anchen is therefore liable to Plaintiff for doing so.

23 93. Plaintiff's knowledge and disagreement with Anchen's conduct likely contributed to the
24 decision to terminate her. Basing her termination on her disagreement with Anchen's
25 unlawful conduct is against California public policy.
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SECOND CAUSE OF ACTION

Breach of Contract

94. Plaintiff hereby incorporates paragraphs 1 through 93 as though fully set forth herein.

95. On September 21, 2005 and throughout Plaintiff's employment, Anchen and Plaintiff entered into a written, oral, and implied in fact contract.

96. Defendant Chen issued an offer letter to Plaintiff containing the following terms: (a) Starting annual salary of \$110,000; (b) Starting date of no later than 10/17/05; (c) Stock option of 30,000 shares vested over a five year period (price to be determined by the board); (d) Entitled to purchase up to \$30,000 worth of Anchen stock at a price to be determined by the Board; (e) Eligible for all offered benefits programs: health, dental, 401k, life insurance; and (f) Paid vacations and holidays included.

97. Through its conduct and representations, Anchen also agreed that it would not terminate Plaintiff's employment without good cause.

98. In return, Plaintiff would uproot her home and relocate to Orange County incurring considerable costs, where she would provide services to Anchen as Director of Legal Department.

99. The terms of the offer are clear and as described above, and Plaintiff fully performed all of her obligations under the contract.

100. California maintains a presumption that employment is at-will where no alternative agreement is reached between the parties. *Lab. C. §2922*. This presumption, however, may be overcome by evidence of an implied agreement that the employment is to continue indefinitely pending some occurrence such as "cause" for termination. *Foley v. Interactive Data Corporation* (1988) 47 Cal.3d 654, 680.

101. Anchen represented to Plaintiff that she had a secure position with the company by

1 assuring that she would receive valuable stock options vesting over a five year period.
2 Defendant Chen assured Plaintiff that the stock options he was offering, which vested
3 over five years, would make up for the fact that he could not offer her a salary
4 commensurate with that which she was already receiving. Defendant Chen further told
5 Plaintiff that the stock options would make them all "rich" after the product launch, again
6 implying that Plaintiff would be employed at the time of the launch.
7

8 102. The possibility of "at-will" employment was never even mentioned as Plaintiff
9 negotiated the terms of her new employment. In fact, any reference to "at-will"
10 employment was explicitly left out of the offer letter Defendant Chen sent to her. It is
11 clear that Plaintiff's employment was not nor was it intended to be "at-will." Therefore,
12 by terminating Plaintiff on or about April 13, 2006, despite her exemplary performance
13 and without good cause, Anchen breached the employment agreement.
14

15 103. Plaintiff never received an agreement for the \$30,000 of stock which she is entitled
16 to purchase in accordance with her written employment offer.

17 104. By failing to provide Plaintiff with this agreement or the opportunity to purchase
18 stock, Anchen breached its contract with Plaintiff and is liable for damages.
19

20 105. Anchen also has a policy of paying employees a recruiting bonus of \$2,500 when
21 the employee successfully recruits a candidate to Anchen. Plaintiff was responsible for
22 introducing Mr. Thomas Nimmer to Anchen and is therefore owed a recruiting bonus of
23 \$2,500. The bonus became payable on Mr. Nimmer's six month anniversary, which was
24 approximately August 15, 2006. As Plaintiff did not receive the bonus, Anchen is liable
25 to Plaintiff for an additional \$2,500.
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THIRD CAUSE OF ACTION

Breach of Implied Covenant of Good Faith and Fair Dealing

106. Plaintiff hereby incorporates paragraphs 1 through 105 as though fully set forth herein.

107. Anchen is liable to Plaintiff for breaching the implied covenant of good faith and fair dealing. Every contract implies a covenant of good faith and fair dealing, whereby the parties to the agreement implicitly promise not to take any action that would impair the ability to obtain the benefits of the agreement. *Sheppard v. Morgan Keegan & Company* (1990) 218 Cal.App.3d 61, 66. In *Sheppard*, the Court found that the implied covenant of good faith and fair dealing applied where appellant employee had quit his former employment and relocated only to have his position terminated before he had an opportunity to perform his duties to the satisfaction of his employer. *Sheppard* at 67.

108. Like the appellant in *Sheppard*, Plaintiff had been induced to relocate her home and give up her former position based on a promise of employment.

109. Plaintiff was hired as the Director of the Legal Department, a brand new position within Anchen, for which no job description even existed.

110. Plaintiff had in fact been hired with the understanding that it would take some time to "settle in" to her position and learn the needs of Anchen. During the interview process, Mr. Mooney specifically said that it could take six months for Plaintiff to become fully acquainted with Anchen's patent litigation needs. Plaintiff had repeatedly asked for guidance in her responsibilities and had been working with Defendant Chen to articulate exactly how he envisioned her position. Defendant Chen, however, terminated Plaintiff's employment, without notice, less than six months after her employment began. Like the appellant in *Sheppard*, Plaintiff simply was not given ample opportunity to demonstrate

1 that she could satisfy the requirements of the position.

2 111. In addition, Anchen has acted in bad faith in regard to the stock options granted to
3 Plaintiff as inducement to accept the employment offer with Anchen.

4 112. Plaintiff's employment offer letter states that she is "Entitled to purchase up to
5 \$30,000 worth of Anchen stock at a price to be determined by the Board."
6

7 113. At the time of her hire, Defendant Chen represented to Plaintiff that the stock had
8 most recently been valued at \$1.40 per share.

9 114. Although the offer letter stated that the price was to be determined, Defendant
10 Chen implied that absent unforeseen circumstances, Plaintiff would be entitled to
11 purchase stock at a price near \$1.40.
12

13 115. Only a few months later, in November 2005, Mr. Jonathan Chang arbitrarily set
14 the strike price at \$3.00, more than double what the shares had been valued at only six
15 months earlier.

16 116. Although questioned by Plaintiff and several other Anchen employees,
17 Mr. Jonathan Chang refused to explain his rationale for setting the strike price at \$3.00 per
18 share, nor would he provide any data supporting the price. It is apparent that the strike price
19 was set at more than double the value in order to deny Plaintiff the full value of the terms of
20 her employment agreement in direct violation of the implied covenant of good faith and fair
21 dealing.
22

23 117. Anchen has acted to prevent Plaintiff from obtaining any shares of Anchen stock,
24 despite Defendant Chen's repeated promises prior to her hire that the shares he was
25 offering to her would make her "rich." Plaintiff is entitled to purchase \$30,000 worth of
26 Anchen shares. Anchen has not provided with Plaintiff with any agreement nor given her
-- the opportunity to purchase such shares in an effort to deny her this benefit she is entitled

1 to.

2 118. Further, Anchen terminated Plaintiff prior to the vesting date of any of the
3 incentive stock options she was entitled to under her employment agreement. Therefore,
4 Plaintiff was terminated, at least in part, to deny her the opportunity to hold shares of
5 Anchen stock, an opportunity that was used to induce Plaintiff to initially accept
6 employment.
7

8 119. As a result of terminating Plaintiff's employment without allowing her adequate
9 opportunity to demonstrate her ability to perform the position and purposely denying
10 Plaintiff stock options to which she was entitled, Anchen prevented Plaintiff from
11 obtaining the benefits of her employment agreement, thereby breaching the implied
12 covenant of good faith and fair dealing.
13

14 **FOURTH CAUSE OF ACTION**

15 **Promissory Estoppel**

16 120. Plaintiff hereby incorporates paragraphs 1 through 119 as though fully set forth
17 herein.

18 121. The doctrine of promissory estoppel provides that "A promise which the promisor
19 should reasonably expect to induce action or forbearance on the part of the promisee or a
20 third person and which does induce such action or forbearance is binding if injustice can
21 be avoided only by enforcement of the promise." *Sheppard v. Morgan Keegan &*
22 *Company* (1990) 218 Cal.App.3d 61, 67. In *Sheppard*, the Court found that in addition to
23 the implied covenant of good faith and fair dealing, promissory estoppel also governed the
24 employer's conduct where the employer terminated the employee prior to allowing time to
25 demonstrate his abilities to perform after inducing the employee to move his residence in
26 anticipation of new employment. *Id.* at 67.

- 1 122. Defendant Chen, acting on behalf of Anchen, promised Plaintiff that upon
2 accepting employment with Anchen, Plaintiff would have the opportunity to purchase
3 \$30,000 worth of Anchen stock and throughout her employment would be granted 30,000
4 stock options that would result in considerable wealth to her.
5
- 6 123. Defendant Chen assured her that the stock options she would be granted would
7 more than make up for Anchen's inability to provide a competitive annual salary to her.
8
- 9 124. Defendant Chen implied that Plaintiff would be employed long enough to enjoy
10 the benefits of the incentive stock options set to vest over a five-year period.
11
- 12 125. In reliance on Defendant Chen's representations, Plaintiff resigned from her stable
13 position with the law firm of Bowman & Brooke.
14
- 15 126. In further reliance on Defendant Chen's representations, Plaintiff sold her home in
16 Torrance and moved her residence to Orange County at considerable time and expense to
17 her and her husband.
18
- 19 127. Defendant Chen was fully aware of Plaintiff's position with the law firm of
20 Bowman & Brooke and the salary and benefits she would be required to relinquish, as a
21 result of her employment with Anchen.
22
- 23 128. Defendant Chen also knew that if she were convinced to accept employment with
24 Anchen, Plaintiff would move her residence, as he encouraged her to do so.
25
- 26 129. Defendant Chen and Anchen, however, failed to provide Plaintiff with the
opportunity to purchase the \$30,000 worth of Anchen stock; nor did they allow Plaintiff
the opportunity to perform her position to Anchen's satisfaction, but instead terminated
her without good cause, preventing the vesting of the stock options which Defendant Chen
had used to induce Plaintiff to leave her position.
130. Defendant Chen and Anchen induced Plaintiff to leave her former employment

1 and subsequently failed to honor their promises to her. Had Plaintiff known that she
2 would be denied shares of Anchen stock, to which she was entitled and that Anchen
3 would terminate her employment without good cause and without allowing her an
4 adequate opportunity to perform her duties, she would not have left her former
5 employment, sold her Los Angeles home and moved her residence to Orange County.
6

7 **FIFTH CAUSE OF ACTION**

8 **Defamation**

9 131. Plaintiff hereby incorporates paragraphs 1 through 130 as though fully set forth
10 herein.

11 132. Anchen's treatment of Plaintiff also raises issues of defamation of her professional
12 reputation and character. Defamation includes both libel and slander.

13 As defined in the California Civil Code: Slander is a false and unprivileged publication,
14 orally uttered, and also communications by radio or any mechanical or other means
15 which... (3) Tends directly to injure him in respect to his office, profession, trade or
16 business, either by imputing to him general disqualification in those respects which the
17 office or other occupation particularly requires, or by imputing something with reference
18 to his office, profession, trade, or business that has a natural tendency to lessen its profits;
19 ...or (5) which, by natural consequence, causes actual damage. *Cal. Civ. Code §46.*
20
21

22 133. Where, as in this case, the slanderous statements are defamatory on their face
23 ("slander per se"), general damage to the plaintiff's reputation is conclusively presumed
24 without any further showing. *Contento v. Mitchell* (1972) 28 Cal.App.3d 356, 358.

25 134. In this case, Plaintiff was subjected to slander per se. As set forth above,
26 Defendant Chen stated, among other things, that she did not understand corporate law and
-- that she did not perform her job well.

1 135. Defendant Chen also informed her in the presence of Domingo Tan and Thomas
2 Nimmer, that Mr. Tim Chang, outside counsel for Anchen, had made a number of
3 disparaging remarks about her professional abilities as well.

4
5 136. On April 12, 2006, Defendant Chen also publicly announced and discussed with
6 Thomas Nimmer his intent to fire Plaintiff in the propped open door stairwell of the
7 facility. As such, the acoustics of the stairwell broadcast and amplify conversations to
8 staff both on the first floor open laboratory and cubicles as well as to corporate staff on the
9 second floor.

10 137. The number of employees and professional colleagues who heard disparaging
11 remarks and to whom statements were made directly is yet unknown, but it is likely
12 significant, and has caused considerable harm to Plaintiff's professional reputation.

13
14 138. Slander per se entitles Plaintiff to an award of special damages, general damages
15 (including separate elements for reputational harm and emotional distress) and punitive
16 damages. 5 *Witkin, Summary of California Law, Torts* §480 (9th ed. 1998); *Contento v.*
17 *Mitchell*, (1972) 28 Cal. App. 3d 356.

18 **SIXTH CAUSE OF ACTION**

19 **Sex and Race Discrimination in Violation of FEHA and California Public Policy**

20
21 139. Plaintiff hereby incorporates paragraphs 1 through 138 as though fully set forth
22 herein.

23 140. Under the *California Fair Employment and Housing Act [FEHA]*, it is an unlawful
24 employment practice for "an employer, because of the race... [or] sex...of any person...to
25 discharge the person from employment...or to discriminate against the person in
26 compensation or in terms, conditions, or privileges of employment." *Cal. Gov. Code*
27 §12940(a). It is also against the public policy of California to terminate an employee on

1 the basis of her race or sex. *See California Constitution, Article 1, Section 8.*

2 141. Shortly after Plaintiff's hire, Defendant Chen began to pry into Plaintiff's personal
3 life. Defendant Chen asked Plaintiff inappropriate questions about her plans to have
4 children. Defendant Chen then shared personal information regarding his own
5 relationship and thoughts about having a baby.
6

7 142. Though Plaintiff complained about his conduct to the Human Resources Manager,
8 nobody to Plaintiff's knowledge ever spoke with Defendant Chen about his questioning.
9 Instead, Defendant Chen began to ask Plaintiff to set him up on dates with her own
10 friends, putting Plaintiff in an awkward and uncomfortable situation.
11

12 143. Further, women were clearly viewed as inferior to men at Anchen. The vast
13 majority of female employees at Anchen held secretarial and clerical functions. Mr.
14 Jonathan Chang in fact expressed his disagreement with having a male receptionist, even
15 temporarily. Though a few females held management positions, they were rarely included
16 in business strategy meetings.

17 144. Though Plaintiff was hired to handle both legal and human resources matters at the
18 company, Defendant Chen often left her out of meetings, and usually only included her at
19 the request of Mr. Mooney, Anchen's outside counsel.
20

21 145. More importantly, Defendant Chen refused to respect Plaintiff's advice and
22 opinions simply because she was a Caucasian female.

23 146. Plaintiff learned from more than one Anchen employee that Defendant Chen had
24 said that she did not fit in culturally and did not understand the "Chinese way" of doing
25 business. When he disagreed with Plaintiff on any particular matter, Mr. Chen's usual
26 reaction was to state that she "doesn't understand."
--

147. Plaintiff was in fact forced to communicate with Defendant Chen through Mr.

1 Nimmer because Defendant Chen was not receptive to her.

2 148. Moreover, although other employees questioned a number of Defendant Chen's
3 business decisions, along with Plaintiff, Plaintiff was the only employee punished for
4 doing so. When she refused to sanction the "special" terms of employment offered to Mr.
5 Balucci, Defendant Chen was enraged and protested that she didn't "understand." None
6 of the other employees who disagreed with hiring Mr. Balucci were even criticized.
7

8 149. Further, she and a number of others questioned the November 2005 valuation of
9 the company and shares of stock at \$3.00, but she was blamed for "causing problems."

10 150. It was clear to Plaintiff that as a Caucasian woman, Defendant Chen did not think
11 she should question his business decisions, whereas other employees who were either
12 male or Asian, or both, were not reprimanded for their disagreement.
13

14 151. Plaintiff was allegedly terminated because her position was eliminated. However,
15 the evidence clearly shows that Plaintiff was terminated because of her race and sex, in
16 addition to her refusal to engage in unlawful activity. Such conduct is in direct violation
17 of California law and Anchen is therefore liable to Plaintiff for damages.
18

19 SEVENTH CAUSE OF ACTION

20 Retaliation in Violation of FEHA and California Public Policy

21 152. Plaintiff hereby incorporates paragraphs 1 through 151 as though fully set forth
22 herein.

23 153. Plaintiff engaged in protected activity by communicating her concerns to
24 management, including Mr. Thomas Nimmer, Mr. Jonathan Chang, Ms. Margaret Choy, and
25 Defendant Chen, that Defendant Chen and Mr. Domingo Tan's instructions to Plaintiff to hire
26 Mr. David Balucci for the purpose of Mr. Balucci to copy and apply the competitor
-- company's confidential and trade secret information for Anchen's benefit required Plaintiff to

1 participate in a conspiracy to commit trade secret theft in order to complete her job duties.

2
3 154. As a direct result of Plaintiff's complaints, Defendants subjected Plaintiff to an
4 adverse employment action by terminating Plaintiff's employment in retaliation in
5 violation of Government Code Section § 12940 (h).

6 155. As a direct and proximate result of Defendants' willful, knowing, intentional and
7 wrongful termination of his employment, Plaintiff has suffered and will continue to suffer
8 a loss of earnings and other employment benefits and job opportunities. Plaintiff is
9 entitled to general and compensatory damages in amounts in excess of the jurisdictional
10 limits of this court.

11
12 156. Plaintiff is informed and believes, and based thereon alleges, that the outrageous
13 conduct of the Defendants and its employees and agents described above was done with
14 fraud, oppression and malice, and with a conscious disregard for Plaintiff's rights with the
15 intent, design and purpose of injuring her. Plaintiff is entitled to punitive or exemplary
16 damages from all Defendants in an amount in excess of the jurisdictional limits of this
17 court

18
19 **EIGHTH CAUSE OF ACTION**

20 **Intentional Infliction of Emotional Distress**

21
22 157. Plaintiff hereby incorporates paragraphs 1 through 156 as though fully set forth
23 herein.

24 158. When Defendants engaged in the acts and omissions as alleged herein, they knew
25 that such acts and omissions would cause Plaintiff to suffer severe emotional distress.
26 Defendants' actions amounted to outrageous conduct and were intended to inflict emotional
distress upon Plaintiff by engaging in the acts and omissions alleged herein.

159. As a proximate cause of the acts and omissions as alleged herein, Plaintiff was

1 hurt and injured in her health and suffered severe emotional distress which injuries have
2 caused and continue to cause Plaintiff great mental, physical and nervous pain and suffering, and
3 anguish all to her general damage in a sum to be proven at trial.

4 160. The aforementioned conduct of Defendants was intentional and constituted
5 despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious
6 disregard of Plaintiff's rights, so as to justify an award of exemplary or punitive damages.
7

8 **NINTH CAUSE OF ACTION**

9 **Negligent Infliction of Emotional Distress**

10 161. Plaintiff hereby incorporates paragraphs 1 through 160 as though fully set forth
11 herein.

12 162. When Defendants engaged in the acts and omissions as alleged herein, they knew
13 or should have known that such acts and omissions would cause Plaintiff to suffer severe
14 emotional distress.
15

16 163. As a proximate cause of the acts and omissions as alleged herein, Plaintiff was
17 hurt and injured in her health and suffered severe emotional distress which injuries have
18 caused and continue to cause Plaintiff great mental, physical and nervous pain and suffering, and
19 anguish all to her general damage in a sum to be proven at trial.
20

21 ***PRAYER FOR RELIEF***

22 **WHEREFORE**, Plaintiff Kellie Ann Moore prays for judgment against Defendants, and each
23 of them, as follows:
24


- 25 1. General and special compensatory damages in excess of the jurisdictional limits of
26 this court, according to proof at trial;
2. For emotional damages, according to proof at trial;
3. Costs of suit, including reasonable attorneys fees and interest;

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4. For equitable relief in the form of restitution and injunctive remedies as the court deems proper;
5. Interest on all damages at the highest legal rate;
6. For punitive and exemplary damages in an amount sufficient to deter Defendants from engaging in such conduct again in the future, according to proof at the time of trial; and
7. Any other and further relief that the Court considers just and proper.

Dated: June 14, 2007

RONALD G. PARKER

By: 

RONALD GLEN PARKER
Attorney for Plaintiff
KELLIE ANN MOORE

FOR COURT USE ONLY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Street number, and address):

RONALD G. PARKER, ESQ.
1235 N. HARBOR BLVD., #115
FULLERTON, CA 92832

BAR NO. 80504

TELEPHONE NO.: 714/738-0667 FAX NO.: 714 879-2836

ATTORNEY FOR (Name): KELLIE ANN MOORE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
STREET ADDRESS: 700 Civic Center Dr. West
MAILING ADDRESS: P.O. Box 1138
CITY AND ZIP CODE: Santa Ana, CA 92702-1138
BRANCH NAME: Central Justice Center

CASE NAME: KELLIE ANN MOORE vs. ANCHEN
PHARMACEUTICALS, INC., et al.

CASE NUMBER

07C C06883

JUDGE:

JUDGE RANDELL L. WILKINSON

DEPT C

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

Counter Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

Auto (22)
 Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
 Product liability (24)
 Medical malpractice (45)
 Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

Business tort/unfair business practice (07)
 Civil rights (08)
 Defamation (13)
 Fraud (16)
 Intellectual property (19)
 Professional negligence (25)
 Other non-PI/PD/WD tort (35)

Employment

Wrongful termination (36)
 Other employment (15)

Contract

Breach of contract/warranty (06)
 Collections (09)
 Insurance coverage (18)
 Other contract (37)

Real Property

Eminent domain/Inverse condemnation (14)
 Wrongful eviction (33)
 Other real property (26)

Unlawful Detainer

Commercial (31)
 Residential (32)
 Drugs (38)

Judicial Review

Asset forfeiture (05)
 Petition re: arbitration award (11)
 Writ of mandate (02)
 Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

Antitrust/Trade regulation (03)
 Construction defect (10)
 Mass tort (40)
 Securities litigation (28)
 Environmental/Toxic tort (30)
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

Enforcement of judgment (20)

Miscellaneous Civil Complaint

RICO (27)
 Other complaint (not specified above) (42)

Miscellaneous Civil Petition

Partnership and corporate governance (21)
 Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f. Substantial postjudgment judicial supervision

3. Type of remedies sought (check all that apply):

- a. monetary
- b. nonmonetary; declaratory or injunctive relief
- c. punitive

4. Number of causes of action (specify): 9

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: JUNE 14, 2007

RONALD G. PARKER, ESO.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers

If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 5 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. You do not need to submit a cover sheet with amended papers. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Complex Cases

In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (not asbestos or toxic/environmental) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
- Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (not medical or legal)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
- Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)
- Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (not provisionally complex) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
- Contractual Fraud
- Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
- Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (non-domestic relations)
 - Sister State Judgment
 - Administrative Agency Award (not unpaid taxes)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
- Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (not specified above) (42)
- Declaratory Relief Only
- Injunctive Relief Only (non-harassment)
- Mechanics Lien
- Other Commercial Complaint Case (non-tort/non-complex)
- Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (not specified above) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief from Late Claim
- Other Civil Petition