

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MARJORIE WAGONER, KAREN)	
KIRKPATRICK and ERNIE KRULL,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 07-1229-JTM
)	
PFIZER, INC.,)	
)	
Defendant.)	
_____)	

COMPLAINT

COME NOW the plaintiffs, Marjorie Wagoner, Karen Kirkpatrick, and Ernie Krull, and for their claims of relief against the defendant, Pfizer, Inc. (“Pfizer”), allege and state as follows:

THE PARTIES

1. Plaintiff Marjorie Wagoner is an individual who resides in Wichita, Kansas.
2. Plaintiff Karen Kirkpatrick is an individual who resides in Norman, Oklahoma.
3. Plaintiff Ernie Krull is an individual who resides in Tucson, Arizona.
4. Defendant Pfizer is a Delaware corporation doing business in Kansas. Pfizer may be served with process by serving its resident agent, The Corporation Company, Inc., 515 South Kansas Ave., Topeka, Kansas 66603. Pfizer’s principal corporate headquarters are located at 235 East 42nd Street, New York, NY 10017.

JURISDICTION AND VENUE

5. This Court has federal question jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.
6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c) because Pfizer, a corporation, is subject to personal jurisdiction in Kansas.

**PFIZER'S SCHEME TO DISCRIMINATE AND INFLICT EMOTIONAL DISTRESS
AND PHYSICAL HARM AGAINST SOME OF ITS EMPLOYEES BECAUSE OF
THEIR AGE AND PFIZER'S AGE DISCRIMINATION TACTICS**

7. Plaintiffs incorporate by reference, as if set forth fully herein, paragraphs 1 through 6 of this Complaint.

8. Beginning in or about 2005, Pfizer engaged in deceptive tactics designed to deprive certain of Pfizer's employees over the age of 40 of their federal and state rights regarding age discrimination. At this early stage of the proceedings, and as a result of the extensive investigation conducted on behalf of the plaintiffs, plaintiffs have ascertained that one of the key tactics utilized by Pfizer was to make false charges against key employees accusing them of violating various company policies. These tactics were used in order to develop a pretext to terminate employees who otherwise had an excellent work record.

9. Plaintiff Marjorie Wagoner, is an example of how far Pfizer went to violate her rights as a United States citizen and a citizen of the State of Kansas. Ms. Wagoner began working for Pfizer on January 2, 1980 as a pharmaceutical sales representative. She worked for Pfizer for nearly 26 years, all in the Wichita, Kansas area. Her most recent job title was Territory Specialty Representative. Prior to Pfizer's illegal schemes and tactics, Ms. Wagoner had an excellent work record.

10. In the case of Ms. Wagoner, in September of 2005, Pfizer reorganized and Clark Mohar, who was located in Leawood, Kansas, became her new supervisor. Mr. Mohar was immediately hostile to Ms. Wagoner. He made clear that he preferred training and supervising younger sales representatives. Mr. Mohar repeatedly made derogatory comments about Ms. Wagoner's age. Some of these derogatory comments were made at open meetings. For

example, during a district meeting on September 12, 2005, Mr. Mohar publicly asked Ms. Wagoner when she intended to retire. During a field ride on or about September 27, 2005, Mr. Mohar referred to Ms. Wagoner as “Nancy Timbers” because she had, in Mr. Mohar’s words, an “adult learning style.” Nancy Timbers was an elderly sales representative in the Kansas City area whom Mr. Mohar previously supervised. This was the beginning of Pfizer’s attempts to intimidate Ms. Wagoner and to run her out of Pfizer by manufacturing false charges to justify firing her.

11. On June 28, 2006, Marjorie Wagoner was suddenly summoned to a meeting at Pfizer’s regional offices near Chicago, Illinois. The meeting was scheduled for the following day. Ms. Wagoner was not apprised of the purpose of the meeting. When Marjorie Wagoner arrived at the meeting, four representatives of Pfizer management were present: Clark Mohar; JoAnn Yeksigian, Regional Manager; Larry Guess, Assistant to the Regional Manager; and Elizabeth Chaudhari, a human relations department representative. During that meeting, Marjorie Wagoner was berated and falsely accused of changing and altering dates of certain starter (drug sample) forms to balance out her daily sales activities. She was humiliatingly interrogated and browbeaten for hours regarding the false charges. Ms. Wagoner repeatedly and adamantly denied the accusations, but that did not stop Pfizer from continuing the attack. At one point, Elizabeth Chaudhari angrily exclaimed that she did not believe Ms. Wagoner, though she never explained why. The interrogation was so intense that it caused Ms. Wagoner to vomit and feel faint at the airport as she was leaving Chicago that evening.

12. On July 10, 2006, Pfizer sent a letter to the United States Food and Drug Administration (“FDA”) falsely alleging that Ms. Wagoner admitted during the Chicago meeting

to falsifying the dates of her starter forms to balance her sales day activities. Pfizer represented that it would conduct an audit of Ms. Wagoner's forms and would report the results of the investigation to the FDA within 30 days.

13. Marjorie Wagoner received a copy of this libelous letter and immediately contacted Pfizer representative Mr. Mohar to point out that she never admitted changing the dates on her starter forms. All along, this was merely a sham that was trumped up by Pfizer to justify terminating Ms. Wagoner's employment.

14. To further justify Ms. Wagoner's wrongful termination and to masquerade its true illegal intentions, Pfizer deliberately and illegally abused the FDA's drug surveillance monitoring and compliance system when it knowingly lied in its July 10, 2006 letter about Ms. Wagoner allegedly admitting to falsifying the dates of her starter forms to balance her sales day activities. Pfizer's actions amount to a criminal felony offense. *See* 18 U.S.C. § 1001; *United States v. Maniago*, 987 F. Supp. 234, 235-36 (S.D.N.Y. 1997) (finding that it is a criminal felony offense to make knowingly false statements to the FDA).

15. On July 14, 2006, prior to the conclusion of Pfizer's audit and without affording Ms. Wagoner any opportunity to verify the accuracy of these allegedly inaccurate forms, she was notified by Pfizer by telephone that her employment was terminated for changing dates on certain starter forms and because her forms were out of order. This was false; this was misleading; this was intended to cause severe emotional distress, mental anguish, indignity, humiliation, depression, and physical harm to Marjorie Wagoner.

16. Marjorie Wagoner was 56 years old when Pfizer wrongfully terminated her. She was replaced by a less experienced and younger employee in his early 30s.

17. Marjorie Wagoner received no prior warnings regarding the alleged inaccuracies in her starter forms.

18. Upset about the false claims made against her by Pfizer and her wrongful termination, Marjorie Wagoner conducted her own investigation. She showed the disputed starter forms to the medical providers who signed them and all verified the accuracy of the date and their signature. She provided this information to Pfizer, but the company still refused to rescind Marjorie Wagoner's termination or correct the intentional misrepresentations contained in the July 10, 2006 letter to the FDA. Pfizer's conduct confirms that it used the false accusations as a pretext to terminate Marjorie Wagoner. In fact, Pfizer conducted an internal investigation after it fired Ms. Wagoner and in an August 10, 2006 letter to the FDA stated:

[W]e conducted an audit of a sub-set of Ms. Wagoner's physician sample receipts, asking each of the prescribers who we contacted to verify their signatures and confirm receiving the sample quantities listed on the indicated dates. Replies have been received from the majority of those contacted and, to date, all have responded affirmatively. We have decided, therefore, to conclude this particular inquiry, but will advise you promptly in the event that any new details are received that leads to its reopening. In the absence of such information, this will serve as our final report on this matter.

19. Pfizer has not reopened its investigation or reported additional details to the FDA.

20. As a result of Pfizer's vile tactics, Ms. Wagoner has been under the care of her personal physicians and her dentist. She has inexplicably gained weight. She suffers from insomnia. In addition, she now grinds her teeth, which requires her to wear a mouth guard.

21. Ms. Wagoner, on or about January 29, 2007, timely filed a charge with the EEOC and the Kansas Human Rights Commission regarding unlawful discrimination on the basis of age. A right to sue letter was issued on June 5, 2007.

22. Another example of Pfizer's schemes and tactics to discriminate against its employees based on age involves plaintiff Karen Kirkpatrick.

23. Karen Kirkpatrick began working for Parke-Davis Pharmaceuticals as a pharmaceutical sales representative in August of 1989. Warner-Lambert, which owned Parke-Davis, merged with Pfizer in approximately 2000. Ms. Kirkpatrick worked for Parke-Davis/Pfizer for 17 years in the Southern Oklahoma area. Her most recent job title was Senior Professional Healthcare Representative.

24. Following Pfizer's reorganization in September of 2005, Geoff Holt became Ms. Kirkpatrick's supervisor. As was the situation with Marjorie Wagoner, Ms. Kirkpatrick's new supervisor from Pfizer was immediately hostile to her, repeatedly making derogatory comments about Ms. Kirkpatrick's age. For example, during a kick-off meeting on approximately September 12, 2005, Mr. Holt approached Ms. Kirkpatrick and indicated that he and Curt McAllister, Pfizer's Regional Vice-President, "had no idea you were as old as you are." Mr. Holt also made dramatic references to the fact that Ms. Kirkpatrick had been a sales representative for a long time.

25. On July 20, 2006, approximately one month after Ms. Wagoner was viciously interrogated and fired, Ms. Kirkpatrick received a phone call from Mr. McAllister's secretary also summoning her to Chicago for a meeting the following day. Like Ms. Wagoner, Ms. Kirkpatrick was not apprised of the purpose of the meeting. Like Ms. Wagoner, she was accused of violating certain policies regarding starter forms to balance out her daily sales activities. Like Ms. Wagoner, Ms. Kirkpatrick was humiliatingly interrogated and browbeaten for hours by four members of Pfizer's management regarding her starter form practices. And, like Ms. Wagoner,

Ms. Kirkpatrick adamantly denied the false accusations. Pfizer's representative Mr. McAllister stomped to the front of the room and angrily exclaimed that he did not believe Karen Kirkpatrick. The interrogation was so intense that Karen Kirkpatrick became physically sick during the meeting. She informed the Pfizer representatives that they were making her sick, yet they refused to stop the meeting. Karen Kirkpatrick was nevertheless forced to leave the room on multiple occasions to go to the bathroom to vomit.

26. Pfizer's despicable tactics caused Ms. Kirkpatrick to vomit and diarrhea for weeks following the Chicago interrogation. In addition, she now suffers from irritable bowel syndrome, insomnia, high blood pressure, and migraine headaches several times per week, all as a result of Pfizer's outrageous actions.

27. On August 21, 2006, without affording Ms. Kirkpatrick an opportunity to verify the accuracy of the allegedly inaccurate forms, Ms. Kirkpatrick was notified by telephone that her employment was being terminated by Pfizer for changing dates on several starter forms and because her forms were out of order. These accusations were false and Pfizer knew it.

28. Ms. Kirkpatrick received no prior warnings regarding the alleged inaccuracies in her starter forms. In fact, Mr. Holt commended her just two months earlier for keeping perfect starter records.

29. At the time of her termination, Karen Kirkpatrick was 55 years old. She was replaced by a less experienced and younger individual who was about 25 years old.

30. Karen Kirkpatrick, on or about January 4, 2007, timely filed a charge with the EEOC and the Oklahoma Human Rights Commission regarding unlawful discrimination on the basis of age. A right to sue letter was issued on June 28, 2007.

31. The third plaintiff, Ernie Krull, started working for Pfizer in 2003. His prior employer, Pharmacia, merged with Pfizer. Within two months of this merger, Mr. Krull was promoted to the position of Specialty Representative. Pfizer reorganized in September of 2005 and after that point in time Mr. Krull began reporting to Jim Hafner of Pfizer. Mr. Krull was the most senior and experienced employee working under Mr. Hafner.

32. In approximately December of 2005 or January of 2006, Mr. Krull was summoned to Pfizer's corporate headquarters in New York, New York. Mr. Krull was not apprised of the purpose of the meeting. When he arrived in New York, Mr. Krull was interrogated by two Pfizer attorneys for at least three hours regarding his expense reports. Mr. Krull denied any wrongdoing. His expenses were always authorized and approved by his manager. At one point, Mr. Krull inquired whether he should have his own attorney present. Pfizer's attorneys retorted that he was not permitted to have counsel present.

33. Mr. Krull was summoned to New York again in approximately February of 2006 so he could be harassed once more by the same Pfizer attorneys for several hours regarding his expense reports. Just as he did during the first meeting, Mr. Krull denied any wrongdoing. The attorneys nevertheless indicated their intent to continue the witch-hunt.

34. Mr. Krull was subsequently rewarded with a 4.5% raise in salary for his exemplary job performance, as well as two vouchers for free airline tickets for travel in the United States and Europe. Mr. Krull also received a free trip for winning a Pfizer sales contest.

35. A few weeks later, on May 19, 2006, Mr. Krull was surprised to learn by telephone that Pfizer was terminating his employment for the violation of an undisclosed company policy. Mr. Krull was never informed what policy he allegedly violated and how he

violated it. He was told only that the phantom policy was in the “orange book,” a copy of which Mr. Krull never received.

36. Pfizer’s dreadful conduct continued after Mr. Krull’s wrongful termination. Pfizer refused to authorize Mr. Krull’s expense reports for almost 9 months. The substantial delay caused American Express to commence collection efforts against Mr. Krull relating to expenses he incurred on behalf of and for the exclusive benefit of Pfizer.

37. In Mr. Krull’s case, he never knew what he allegedly violated. Mr. Krull was 52 years old when his employment was terminated by Pfizer. He was replaced by a less experienced individual who was approximately 25 years younger than he.

38. As was the case with the other plaintiffs herein, Mr. Krull was terminated on a pretextual basis because of a violation of some policy.

39. As a result of Pfizer’s illegal actions, Mr. Krull has suffered tremendous stress and insomnia, which has required medical treatment.

40. On or about November 14, 2006, Mr. Krull timely filed a charge with the EEOC and the Arizona Attorney General’s office, Civil Rights Division, alleging unlawful discrimination on the basis of age. Those charges are still pending.

41. Prior to the time Pfizer falsely accused the plaintiffs of violating the policy of Pfizer, each of the plaintiffs had received glowing job performance evaluations during their employment. Their performances were always rated as demonstrating competence. None of the plaintiffs ever received a written performance evaluation indicating any less than satisfactory performance.

42. Pfizer manufactured policy violations by the plaintiffs to disguise Pfizer's true intentions to wrongfully terminate the plaintiffs because of their age.

43. The termination of the plaintiffs herein, without any warnings, and under circumstances involving false accusations, at or about the same time and under similar or like circumstances, suggests that the termination of plaintiffs' employment was part of a common plan or scheme by Pfizer to terminate employees who were at least 40 years of age or older on the basis of their age.

44. Pfizer stripped the plaintiffs of their dignity and trampled their rights in order to increase the company's profits. Pfizer operates according to a philosophy that its illegal actions are justified as long as they make more money for the company. Why else would Pfizer terminate high-performance employees unless doing so economically benefits the company?

45. Pfizer's illegal actions exhibit a deliberate and conscious disregard for the law. Pfizer acts as though it is so powerful that the laws do not apply to it. It believes that it is subject to a different set of rules than the rest of society. Pfizer has created a corporate culture of complete and utter disregard for the laws of the United States and the rights and dignity of its employees.

COUNT ONE - VIOLATION OF THE ADEA (WAGONER)

46. Plaintiffs incorporate by reference, as if set forth fully herein, paragraphs 1 through 45 of this Complaint.

47. Pfizer intentionally and maliciously discriminated against Marjorie Wagoner on the basis of her age when it terminated her employment under the pretext that her starter forms were out of order and that she changed dates on starter forms to balance her daily sales activities.

48. Pfizer's actions are in direct violation of the ADEA, 29 U.S.C. § 621 *et seq.*

WHEREFORE, Ms. Wagoner respectfully prays for a judgment against Pfizer for back pay and front pay, including wages, bonuses, and fringe benefits, plus liquidated damages, attorneys' fees, costs, and such other and further relief as the Court deems just and proper.

**COUNT TWO - INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS (WAGONER)**

49. Plaintiffs incorporate by reference, as if set forth fully herein, paragraphs 1 through 48 of this Complaint.

50. Pfizer's actions are so outrageous in character and so extreme in degree, as to go beyond all possible bounds of decency. Such actions are atrocious and utterly intolerable in a civilized community. *See Taiwo v. Vu*, 249 Kan. 585, 822 P.2d 1024 (1991) (affirming jury verdict against the plaintiff's former employer for intentional infliction of emotional distress where the employer abused the criminal justice system by filing a false police report accusing the plaintiff and her husband of breaking the law and inducing another employee to lie to the police); *Graham v. Commonwealth Edison Co.*, 742 N.E.2d 858 (Ill. App. Dist. 1 2000) (finding that former employee stated claim for intentional infliction of emotional distress where employer conducted sham investigation against him in retaliation for reporting safety violations by the employer).

51. Pfizer, by its outrageous and extreme actions, intentionally and maliciously caused severe emotional distress, mental anguish, indignity, humiliation, depression, and physical harm to Marjorie Wagoner.

WHEREFORE, Ms. Wagoner prays for judgment against Pfizer for actual and compensatory damages, plus punitive damages, attorneys' fees, costs, and such other and further relief as the Court deems just and proper.

COUNT THREE - VIOLATION OF THE ADEA (KIRKPATRICK)

52. Plaintiffs incorporate by reference, as if set forth fully herein, paragraphs 1 through 51 of this Complaint.

53. Pfizer intentionally and maliciously discriminated against Karen Kirkpatrick on the basis of her age when it terminated her employment under the pretext that her starter forms were out of order and that she changed dates on starter forms to balance her daily sales activities.

54. Pfizer's actions are in direct violation of the ADEA.

WHEREFORE, Ms. Kirkpatrick respectfully prays for a judgment against Pfizer for back pay and front pay, including wages, bonuses, and fringe benefits, plus liquidated damages, attorneys' fees, costs, and such other and further relief as the Court deems just and proper.

COUNT FOUR – AGE DISCRIMINATION IN VIOLATION OF OKLAHOMA PUBLIC POLICY (KIRKPATRICK)

55. Plaintiffs incorporate by reference, as if set forth fully herein, paragraphs 1 through 54 of this Complaint.

56. Age discrimination violates Oklahoma's public policy, as embodied by the Oklahoma Anti-Discrimination Act. 25 O.S. §§ 1101 *et seq.* See *Saint v. Data Exch., Inc.*, 145 P.3d 1037 (Okla. 2006).

57. Pfizer willfully and maliciously discriminated against Karen Kirkpatrick on the basis of her age when it terminated her employment under the pretext that her starter forms were out of order and that she changed dates on starter forms to balance her daily sales activities.

58. Pfizer's actions are in direct violation of Oklahoma's public policy against age discrimination.

59. As a result of Pfizer's unlawful actions, Ms. Kirkpatrick has suffered monetary and non-monetary damages, including severe emotional distress, mental anguish, indignity, humiliation, depression, and physical harm.

WHEREFORE, Ms. Kirkpatrick respectfully prays for a judgment against Pfizer for back pay and front pay, including wages, bonuses, and fringe benefits, plus compensatory and punitive damages, attorney's fees, costs, and such other and further relief as the Court deems just and proper.

**COUNT FIVE - INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS (KIRKPATRICK)**

60. Plaintiffs incorporate by reference, as if set forth fully herein, paragraphs 1 through 59 of this Complaint.

61. Pfizer's actions are so outrageous in character and so extreme in degree, as to go beyond all possible bounds of decency. Such actions are atrocious and utterly intolerable in a civilized community. *See Adams v. American Airlines, Inc.*, 202 F.3d 281 (Table) (10th Cir. 2000) (affirming denial of employer's motion for summary judgment on intentional infliction of emotional distress claim where employer allegedly retaliated against recalled employee for filing prior sex discrimination claim); *Graham v. Commonwealth Edison Co.*, 742 N.E.2d 858 (Ill. App. Dist. 1 2000) (finding that former employee stated claim for intentional infliction of emotional distress where employer conducted sham investigation against him in retaliation for reporting safety violations by the employer).

62. Pfizer, by its outrageous and extreme actions, intentionally and maliciously caused severe emotional distress, mental anguish, indignity, humiliation, and physical harm to Karen Kirkpatrick.

WHEREFORE, Ms. Kirkpatrick prays for judgment against Pfizer for actual and compensatory damages, plus punitive damages, attorneys' fees, costs, and such other and further relief as the Court deems just and proper.

COUNT SIX - VIOLATION OF THE ADEA (KRULL)

63. Plaintiffs incorporate by reference, as if set forth fully herein, paragraphs 1 through 62 of this Complaint.

64. Pfizer intentionally and maliciously discriminated against Ernie Krull on the basis of his age when it terminated his employment for allegedly violating an undisclosed company policy.

65. Pfizer's actions are in direct violation of the ADEA.

WHEREFORE, Mr. Krull respectfully prays for a judgment against Pfizer for back pay and front pay, including wages, bonuses, and fringe benefits, plus liquidated damages, attorneys' fees, costs, and such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

The plaintiffs hereby request a trial by jury on all issues herein.

DESIGNATION OF TRIAL

Pursuant to D. Kan. Rule 40.2, the plaintiffs designate Wichita, Kansas as the place of trial in the above-captioned matter.

Respectfully submitted,

s/ Ken M. Peterson

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