

FILED ALAMEDA COUNTY

JUL 14 2014 RIOR COURT

Daniel Velton (SBN 267890)

VJ Chetty (SBN 271778) VELTON ZEGELMAN P.C. 2

525 W. Remington Drive, Suite 106 Sunnyvale, CA 94087

Telephone: (408) 505-7892 Fax: (408) 228-1930

4 dvelton@vzfirm.com 5 vchetty@vzfirm.com

> Attorneys for Plaintiff **ROB WILLIAMS**

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

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ROB WILLIAMS, an individual,

Plaintiff,

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VS.

STEMCELLS, INC., a Delaware corporation, STEMCELLS CALIFORNIA, INC., a California corporation, and DOES 1-50, inclusive,

Defendants.

Case No.: RG 14732694

COMPLAINT FOR:

(1) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(2) RETALIATION IN VIOLATION OF LABOR CODE § 1102.5

(3) VIOLATION OF GOV'T CODE § 12650 et seq. (CALIFORNIA FALSE **CLAIMS ACT RETALIATION)**

DEMAND FOR JURY TRIAL (UNLIMITED CIVIL)

COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF AND DEMAND FOR JURY TRIAL

BY FAX

PARTIES

- 1. Plaintiff is, and at all times mentioned herein was, a resident of the County of Santa Clara, California and was an employee of Defendants STEMCELLS, INC., STEMCELLS CALIFORNIA, INC. ("STEMCELLS"), and DOES 1-50, inclusive (collectively "Defendants" or "the company"). On information and belief, there exists and at all times mentioned herein has existed a unity of interest and ownership between all corporate Defendants, such that any individuality and separateness among these Defendants, and each of them, have ceased, and one is the alter ego of the other and all were joint employers of Plaintiff.
- 2. Plaintiff alleges on information and belief that Defendants are corporations and/or individuals authorized to do business, employing individuals in and existing under the laws of the State of California. Defendants own and operate a publicly traded company (NASDAQ:STEM) involved in stem cell research, development and commercialization, with company headquarters located at 7707 Gateway Boulevard, Suite 140, Newark, CA 94560.
- 3. Plaintiff is ignorant of the true names and/or capacities of the defendants sued herein as DOES 1-50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend the Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously named defendants is legally responsible for the occurrences herein alleged and that Plaintiff's losses and damages are the result of their wrongful conduct.
- 4. Plaintiff is informed and believes and thereon alleges that at all relevant times herein, all defendants and DOES 1-50 were the agents, joint employers, alter egos, and/or joint ventures of, or working in concert with the other defendants, and were acting within the course and scope of such agency, employment, joint venture and/or concerted activity. To the extent that said conduct and/or omissions were perpetrated by defendants and their agents, defendants confirmed and ratified said conduct and/or omissions.

JURISDICTION AND VENUE

5. The monetary value of Plaintiff's claims exceeds \$25,000.

- 6. The amount in controversy herein is within the jurisdiction of this Court.
- 7. Defendants were and are companies authorized to do and doing business in the County of Alameda. Plaintiff alleges on information and belief that Does 1-50 were and are California corporations or other business entities or individuals authorized to do and who did business in the County of Alameda.
- 8. The acts, omissions, damages and injury that form the basis of this lawsuit were sustained in the County of Alameda.

FACTUAL ALLEGATIONS

- 9. Defendants hired Plaintiff ROB WILLIAMS to serve as the company's Senior Manager of Manufacturing on or about December 6, 2013. As part of his duties, Plaintiff oversaw the company's Manufacturing Facility, where it cultivated stem cell cultures for use in human clinical trials.
- 10. Shortly after beginning his employment, Plaintiff noted poor sterile technique, failure to adhere to current Good Manufacturing Practices ("cGMP") in the company's manufacturing process, and substantial deficiencies in the company's Manual Aseptic Processing of HuCNS-SC (Human Central Nervous System Stem Cells) cell lines failures and deficiencies that put patients at risk of infection or death during ongoing clinical trials. Plaintiff also noted manufacturing deviations during Cryopreservation of Working Cell Bank (WCB) Lots, which led to numerous stem cell WCB lots with dangerously high numbers of non-viable and/or damaged cells. Knowing that these cells were to be injected into human patients, and that the high level of damaged cells and the possibility of contaminating microorganisms could cause serious harm to patients, Plaintiff immediately took his concerns to upper management. He also noted that the use of adulterated stem cells lots could skew patient test results, effectively jeopardizing data behind years of clinical trials and research.
- 11. Upon raising these concerns with his supervisor, his supervisor, a long-time member of upper management at the company, grew upset with Plaintiff and directed her ire at

12. On March 4, 2014, Plaintiff sent an e-mail to company leadership outlining the above-described concerns regarding the stem cell production line. On May 1, 2014, Plaintiff again sent an e-mail to members of the company's executive team, reiterating his concerns about the process used by the company to create its HuCNS-SC stem cell lines for use in human patients, and describing the resulting retaliation and suspension he faced as a result of bringing the issue out in the open. Mere weeks later, and because of the concerns he raised, the company informed Plaintiff that it was terminating his employment effective May 30, 2014.

FIRST CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Against all corporate Defendants)

- 13. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs, inclusive, and incorporates the same by reference as though fully set forth herein.
- 14. Plaintiff is informed and believes and based thereon alleges that his termination was brought about by the wrongful conduct of Defendants. Such conduct was in violation of the public policy of the State of California as set forth in Labor Code sections 1102.5 and Government Code section 12650 *et seq.*, including Government Code section 12653.
- 15. As alleged above, the company terminated Plaintiff's employment, depriving him of its attendant benefits and compensation, immediately in the wake of and because of his complaints about dangerous/defective products that the company was releasing into the commerce stream for human clinical trials. Plaintiff, in no uncertain words, complained to the company about flaws in its manufacturing process that created a substantial risk to public health and safety, including the threat of infection and even death of patients.

- 16. The effect of the above described termination by the company has been to deprive Plaintiff of employment opportunities and to otherwise adversely affect his status as an employee because of his opposition, refusal to engage in and resistance to unlawful conduct.
- 17. As a proximate result of Plaintiff's termination by Defendants, Plaintiff has suffered and continues to suffer harm, including but not limited to, lost earnings and other employment benefits, loss of future employment benefits, humiliation, emotional distress, and mental pain and anguish, all to his damage in an amount to be proven at trial but exceeding the minimum jurisdictional limits of this Court.
- 18. In doing the acts herein alleged, Defendants acted with oppression, fraud, malice and in conscious disregard of Plaintiff's rights. Plaintiff is therefore entitled to punitive damages in an amount according to proof at trial.
- 19. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses in an amount according to proof at trial.
 - 20. Plaintiff requests relief as described below.

SECOND CAUSE OF ACTION

RETALIATION IN VIOLATION OF LABOR CODE § 1102.5

(Against all corporate Defendants)

- 21. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs, inclusive, and incorporates the same by reference as though fully set forth herein.
- During his employment, Plaintiff engaged in the legally protected activity of communicating to his supervisor and other members of upper management about unlawful conduct and violations in the manufacturing process that threatened patient health and safety, and resisting, opposing and refusing to engage in the same, as well as a cover-up of the same.
- 23. Immediately following and in retaliation for the above-described protected activity, the company terminated Plaintiff's employment effective May 30, 2014.
- 24. Plaintiff's protected activity was a substantial motivating factor for the company's termination of his employment and thus constituted unlawful retaliation in violation of California Labor Code section 1102.5(a)-(c).

- 25. The effect of the above actions and omissions by Defendants has been to deprive Plaintiff of employment opportunities and to otherwise adversely affect his status as an employee because of his opposition and/or resistance to unlawful conduct.
- 26. As a proximate result of Plaintiff's termination by Defendants, Plaintiff has suffered and continues to suffer harm, including but not limited to, lost earnings and other employment benefits, loss of future employment benefits, humiliation, emotional distress, and mental pain and anguish, all to his damage in an amount to be proven at trial but exceeding the minimum jurisdictional limits of this Court.
- 27. In doing the acts herein alleged, Defendants acted with oppression, fraud, malice and in conscious disregard of Plaintiff's rights. Plaintiff is therefore entitled to punitive damages in an amount according to proof at trial.
- 28. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses in an amount according to proof at trial.
 - 29. Plaintiff requests relief as described below.

THIRD CAUSE OF ACTION

VIOLATION OF GOVERNMENT CODE § 12650 et seq.

CALIFORNIA FALSE CLAIMS ACT RETALIATION UNDER GOV'T CODE § 12653

(Against all corporate Defendants)

- 30. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs, inclusive, and incorporates the same by reference as though fully set forth herein.
- 31. By virtue of their work, Defendants receive millions of dollars in government funding, including grants from the California Institute for Regenerative Medicine (CIRM). As part of certifications that Defendants made and, on information and belief, continue to make, to the State of California in order to obtain such funding, Defendants represent that their manufacturing processes yield stem cells that are "safe for human stem cell transplantation." Additionally, in order to secure CIRM funding, Defendants represented and represent that the company follows current Good Manufacturing Practices (cGMPs) promulgated by the U.S. Food and Drug Administration (FDA), a set of standards designed to protect the public from

dangers to consumer/patient health and safety. Plaintiff's protected activity, as described above, included efforts to stop, complaints about and refusal to engage in or cover up violations of these standards, and by extension the false certifications submitted to the government, certifications that the company used and uses in order to secure substantial funding.

- 32. Immediately following and in retaliation for his protected activity and efforts to stop what amounts to violations of the California False Claims Act, the company terminated Plaintiff's employment.
- 33. Plaintiff's protected activity was a substantial motivating factor for the company's termination of his employment and thus constituted unlawful retaliation in violation of California Government Code section 12650 *et seq.*, including section 12653.
- 34. The effect of the above actions and omissions by Defendants has been to deprive Plaintiff of employment opportunities and to otherwise adversely affect his status as an employee because of his opposition and/or resistance to unlawful conduct.
- 35. As a proximate result of Plaintiff's termination by Defendants, Plaintiff has suffered and continues to suffer harm, including but not limited to, lost earnings and other employment benefits, loss of future employment benefits, humiliation, emotional distress, and mental pain and anguish, all to his damage in an amount to be proven at trial but exceeding the minimum jurisdictional limits of this Court.
- 36. In doing the acts herein alleged, Defendants acted with oppression, fraud, malice and in conscious disregard of Plaintiff's rights. Plaintiff is therefore entitled to punitive damages in an amount according to proof at trial.
- 37. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses in an amount according to proof at trial.
 - 38. Plaintiff requests relief as described below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks relief from this Court in the following respects:

- 1. For special and general damages according to proof;
- 2. For double damages pursuant to California Government Code sections 12653;

1	3.	For punitive damages;
2	4.	For a permanent injunction prohibiting Defendants from engaging in violation
3	of relevant provisions of the California Labor Code and Government Code;	
4	5.	For costs of suit incurred herein;
5	6.	For attorneys' fees on causes of action where fees are available by law,
6	including those recoverable pursuant to Government Code 12650 et seq. and Civil Code section	
7	1021.5;	
8	7.	For prejudgment and post-judgment interest as available by law; and
9	8.	For such other and further relief as this Court may deem just and proper.
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11	Dated: July 1	4, 2014 Respectfully submitted,
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13		file
14		Daniel Velton Attorney for Plaintiff
15	·	ROB WILLIAMS
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17		DEMAND FOR JURY TRIAL
18	Plaint	riff hereby demands a jury trial for each cause of action on which he is entitled to a
19	jury trial.	· · · · · · · · · · · · · · · · · · ·
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22	Dated: July 1	4, 2014 Respectfully submitted,
23	Dated, July 1	4, 2014 Respectionly submitted,
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25		Daniel Velton
26		Attorney for Plaintiff ROB WILLIAMS
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