

AUG 06 2012

John A. Clarke, Executive Officer/Clerk
By Dorothy Swain, Deputy
DOROTHY SWAIN

1 HELMER • FRIEDMAN, LLP
Gregory D. Helmer (S.B. #150184)
2 Andrew H. Friedman, P.C. (S.B. #153166)
William O. Kampf (S.B. #217854)
3 723 Ocean Front Walk
Venice, California 90291
4 Telephone: (310) 396-7714
Facsimile: (310) 396-9215

5 Attorneys for Plaintiff
6 KATHY AZARBARZIN

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10
11 KATHY AZARBARZIN,
12 Plaintiff,

13 v.

14 CONVATEC, INC., a corporation, and
15 DOES 1 through 50, inclusive,
16 Defendants.

Case No.

BC489615

COMPLAINT FOR DAMAGES:

- (1) DISABILITY
DISCRIMINATION IN
VIOLATION OF THE
CALIFORNIA FAIR
EMPLOYMENT AND
HOUSING ACT ("FEHA") [CAL.
GOV'T CODE § 12940(a)];
- (2) RETALIATION IN VIOLATION
OF FEHA [CAL. GOV'T CODE
§ 12940(h)];
- (3) WRONGFUL TERMINATION
IN VIOLATION OF PUBLIC
POLICY;
- (4) VIOLATION OF SECTION
§1102.5 OF THE CALIFORNIA
LABOR CODE;
- (5) INTENTIONAL INFLICTION
OF EMOTIONAL DISTRESS;
- (6) NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS

DEMAND FOR TRIAL BY JURY

1 Plaintiff KATHY AZARBARZIN (hereinafter "MS. AZARBARZIN" or
2 "PLAINTIFF"), as an individual, complains and alleges as follows:

3
4 **INTRODUCTION**

5
6 1. MS. AZARBARZIN is a nearly 17-year employee of Defendant
7 CONVATEC, INC. (hereinafter "CONVATEC" or the "COMPANY").

8
9 2. With more than 7,500 employees in over 90 countries, Defendant
10 CONVATEC is one of the world's largest developers/marketers of medical
11 technologies; in 2011, it recorded sales of more than \$500 Million in more than 100
12 countries around the globe. The COMPANY produces medical products in four
13 general categories: (1) ostomy care; (2) wound therapeutics; (3) continence and
14 critical care; and (4) infusion devices. It is the global market leader in the production
15 of fecal incontinence management systems with an approximate 80% market share.
16 Before firing her, Defendant CONVATEC employed MS. AZARBARZIN as an
17 Executive Territory Manager in Los Angeles, California where she was responsible
18 for marketing the COMPANY's products.

19
20 3. Shockingly for a health care company, Defendant CONVATEC harbors
21 a deep-seated animosity toward its own employees who are injured at work; it
22 actively retaliates against employees who suffer such injuries and take time off from
23 work. Indeed, when MS. AZARBARZIN suffered a workers' compensation injury
24 and had to take time off from work, her former supervisor expressly informed her that
25 the COMPANY "frowns upon people taking workers' compensation leave" and he
26 warned her that the COMPANY would "closely scrutinize" her.

27 \\\

28 \\\

1 4. Worse, in order to maintain its status as the market leader, Defendant
2 CONVATEC not only engages in unethical and illegal activities to market and sell its
3 products but it fires those employees who raise questions about the propriety of such
4 conduct. The unethical and illegal marketing/sales strategies include: (1) off-label
5 marketing in direct violation of FDA regulations; and (2) falsely disparaging the
6 medical products sold by its competitors by, for example:

7
8 **Flexi-Seal Fecal Management System**
9

10 A. Defendant CONVATEC produces a device called the Flexi-Seal Fecal
11 Management System (also referred to as "Flexi-Seal FMS") which is a
12 temporary containment device consisting of a soft, flexible, silicone
13 catheter, attached to a closed end collection bag, indicated for bedridden
14 or immobilized, incontinent patients with liquid or semi-liquid stool.
15 Flexi-Seal is FDA approved to contain and divert fecal matter, protect
16 patients' wounds from fecal contamination and reduce both the risk of
17 skin breakdown and spread of infection. Notwithstanding the fact that
18 Flexi-Seal is not FDA approved for use in delivering medicines (*i.e.*,
19 lactulose and other liquid enemas), Defendant CONVATEC instructed
20 its sales force to inform customers that the COMPANY had specifically
21 enlarged the irrigation port on the device so that the Flexi-Seal device
22 could be used to deliver medicines like lactulose. Defendant
23 CONVATEC engaged in this illegal off-label marketing because it was
24 feeling sales pressure from competing products marketed by its
25 competitors – C.R. Bard, Inc. and Hollister, Inc. – which each had a
26 separate port to administer medications. Defendant CONVATEC knew
27 that such marketing was unlawful because it had applied for FDA
28 approval for the administration of medications through the irrigation port

1 and been told by the FDA that it needed further evidence on safety
2 before such approval could be granted.
3

4 B. Notwithstanding the fact that Flexi-Seal is FDA approved only for
5 temporary use (*i.e.*, 29 days or less), Defendant CONVATEC instructed
6 its sales force to suggest that at day 29, the Flexi-Seal device could be
7 removed for a day or two and then re-inserted.
8

9 C. Defendant CONVATEC taught its sales force to inform customers that
10 the Flexi-Seal device was safer than competing products because it did
11 not have ridges or seams that Defendant CONVATEC said, without any
12 scientific evidence, could cause irritation, anal fissures, pressure ulcers,
13 necrosis, and rectal bleeding.
14

15 D. Defendant CONVATEC taught its sales force to inform customers that
16 insertion and removal of the Flexi-Seal device was easier and more
17 comfortable for the patient than C.R. Bard's competing product (the
18 DigniCare SMS) because Flexi-Seal was not funnel-shaped with ribs.
19 Defendant CONVATEC made this representation without any scientific
20 evidence.
21

22 E. Defendant CONVATEC taught its sales force to inform customers that
23 the trans sphincteric zone on C.R. Bard's competing product (the
24 DigniCare SMS) was weaker in strength than on Flexi-Seal and could
25 therefore, unlike Flexi-Seal, easily get twisted or compressed and block
26 the flow of stool. Defendant CONVATEC made this claim without any
27 scientific evidence.
28

1 F. Defendant CONVATEC taught its sales force to inform customers that
2 while Flexi-Seal successfully eliminated catheter odor permeation to
3 levels below those that are humanly detectable, C.R. Bard's competing
4 product (the DigniCare SMS) had a Parylene coating which tended to
5 crack when flexed and therefore allowed for the easy passage of gases.

6
7 G. Defendant CONVATEC also taught its sales force to apprise customers
8 of the purported fact, again without any scientific evidence, that the
9 Flexi-Seal device was safer than competing products because the
10 retention balloon at the end of the silicone catheter was permanently
11 affixed and therefore could not come off while in the patient's anus (as it
12 could in competing devices) where it could migrate up the rectum. In
13 this regard, Defendant CONVATEC instructed its sales force to
14 demonstrate to customers how easily the Flexi-Seal device could be
15 inserted into and then pulled out of a funnel (which represented a
16 patient's anus) versus competing products which required 15 times the
17 force to remove from the funnel.

18
19 **DuoDERM**

20
21 H. Defendant CONVATEC taught its sales force to inform customers that
22 the COMPANY's DuoDERM products (bandage dressings and sterile
23 hydrocolloid gels and pastes) would speed up the healing of wounds by a
24 factor of three and/or that DuoDerm provided "faster, better healing."
25 There is no scientific evidence to back up either of these representations.

26 ///

27 ///

28 ///

1 **DuoDERM Gel**

- 2
- 3 I. Defendant CONVATEC taught its sales force to inform customers that
- 4 the COMPANY's DuoDERM Gel was an "intelligent" gel that could be
- 5 used on wet or dry wounds because the gel "knows" when to donate
- 6 moisture and when to pick up fluids. There is no scientific evidence to
- 7 back up the representation that the gel "knew" when to pick up fluids.
- 8
- 9 J. Defendant CONVATEC also taught its sales force to inform customers
- 10 that the COMPANY's DuoDERM Gel could be used as a vehicle to
- 11 deliver medicine – that is, the sales force informed customer that their
- 12 clinicians were able to mix the DuoDERM Gel with lidocaine,
- 13 morphine, and similar medications for topical pain relief. This off label
- 14 marketing violated FDA regulations.
- 15

16 **AQUACEL**

- 17
- 18 K. Defendant CONVATEC taught its sales force to inform customers that
- 19 the COMPANY's AQUACEL products not only helped to speed the
- 20 healing of wounds but also that they reduced pain and otherwise added
- 21 to patient comfort. There is no scientific evidence to back up this
- 22 representation.
- 23
- 24 L. Although AQUACEL is designed for "draining or wet" wounds,
- 25 Defendant CONVATEC instructed its sales force to inform customers
- 26 that they could simply wet the AQUACEL dressing and then apply it to
- 27 dry wounds.
- 28

5. Defendant CONVATEC, at its highest levels, also condones racial/ethnic stereotyping and discrimination. In this regard, Lucia Luce Quinn, Defendant CONVATEC's Senior Vice President for Human Resources & Corporate Affairs, told MS. AZARBARZIN that the employment of her former supervisor, Mehran Mehrtash, ended, because, as a "hot headed' Middle Eastern man" – "you know how they are" – "he dug his own grave." In response, MS. AZARBARZIN protested Ms. Quinn's disparaging and discriminatory remark saying that she was offended by Ms. Quinn's comment as she (MS. AZARBARZIN) was Middle Eastern having been raised in Iran.

6. In retaliation for MS. AZARBARZIN's workers' compensation leave and her complaints about Defendant CONVATEC's unlawful marketing practices and discrimination/harassment against Middle Easterners, the COMPANY fired her.

JURISDICTION AND VENUE

7. The Court has personal jurisdiction over the defendants because they are residents of and/or are doing business in the State of California.

8. Venue is proper in this county in accordance with Section 395(a) of the California Code of Civil Procedure because the defendants, or some of them, reside in this county, and the injuries alleged herein occurred in this county. In the alternative, venue is appropriate in this county in accordance with Section 395(a) and Section 395.5 of the California Code of Civil Procedure because defendants and MS. AZARBARZIN contracted to perform their obligations in this county, the contract was entered into in this county, and because the liability, obligation and breach occurred within this county.

1 PARTIES

2
3 9. MS. AZARBARZIN is an individual who, at relevant times during the
4 events alleged herein, resided in Los Angeles.
5

6 10. MS. AZARBARZIN is informed and believes, and thereon alleges, that
7 defendants CONVATEC and DOES 1 through 25, and each of them, are, and at all
8 times herein mentioned were, corporations or other business entities qualified to and
9 doing business in the State of California. MS. AZARBARZIN is further informed and
10 believes, and thereon alleges, that said defendants are and were, at all relevant times
11 mentioned herein, "employer[s]" within the meaning of Section 12926(d) of the
12 California Government Code.
13

14 11. The true names and capacities, whether corporate, associate, individual
15 or otherwise of defendants DOES 1 through 50, inclusive, are unknown to MS.
16 AZARBARZIN, who therefore sues said defendants by such fictitious names. Each
17 of the defendants designated herein as a DOE is negligently or otherwise legally
18 responsible in some manner for the events and happenings herein referred to and
19 caused injuries and damages proximately thereby to MS. AZARBARZIN, as herein
20 alleged. MS. AZARBARZIN will seek leave of Court to amend this Complaint to
21 show their names and capacities when the same have been ascertained.
22

23 12. At all times herein mentioned, defendants, and each of them, were the
24 agents, representatives, employees, successors and/or assigns, each of the other, and
25 at all times pertinent hereto were acting within the course and scope of their authority
26 as such agents, representatives, employees, successors and/or assigns and acting on
27 behalf of, under the authority of, and subject to the control of each other.
28

1 **FACTS COMMON TO ALL CAUSES OF ACTION**

2
3 13. MS. AZARBARZIN began her employment with Defendant
4 CONVATEC over seventeen years ago – in May 1995.

5
6 14. During her employment, MS. AZARBARZIN held various positions
7 with the COMPANY's sales force where she was responsible for training sales
8 representatives how to market the COMPANY's products and/or where she directly
9 marketed the COMPANY's products to its customers and potential customers. At all
10 times during her employment, MS. AZARBARZIN's performance was satisfactory or
11 better.

12
13 15. During her employment, Defendant CONVATEC not only instructed its
14 sales force to market the COMPANY's medical products for use in ways not
15 approved by the FDA but also to falsely malign or disparage products marketed by
16 the COMPANY's competitors. For example:

17
18 A. Defendant CONVATEC produces a device called the Flexi-Seal Fecal
19 Management System which is a temporary containment device consisting
20 of a soft, flexible, silicone catheter, attached to a closed end collection
21 bag, indicated for bedridden or immobilized, incontinent patients with
22 liquid or semi-liquid stool. Flexi-Seal is FDA approved to contain and
23 divert fecal matter, protect patients' wounds from fecal contamination
24 and reduce both the risk of skin breakdown and spread of infection.
25 Notwithstanding the fact that Flexi-Seal is not FDA approved for use in
26 delivering medicines (*i.e.*, lactulose and other liquid enemas), Defendant
27 CONVATEC instructed its sales force to inform customers that the
28 COMPANY had specifically enlarged the irrigation port on the device so

1 that Flexi-Seal can be used to deliver medicines like lactulose. Defendant
2 CONVATEC engaged in this illegal off-label marketing because it was
3 feeling sales pressure from competing products marketed by its
4 competitors – C.R. Bard, Inc. and Hollister, Inc. – which had a separate
5 port to administer medications. Defendant CONVATEC knew that such
6 marketing was unlawful because it had applied for FDA approval for the
7 administration of medications through the irrigation port and been told
8 by the FDA that it needed further evidence on safety before such
9 approval could be granted.

- 10
- 11 B. Notwithstanding the fact that Flexi-Seal is FDA approved only for
12 temporary use (*i.e.*, 29 days or less), Defendant CONVATEC instructed
13 its sales force to suggest that at day 29, the Flexi-Seal device could be
14 removed for a day or two and then re-inserted.
- 15
- 16 C. Defendant CONVATEC taught its sales force to inform customers that
17 the Flexi-Seal device was safer than competing products because it did
18 not have ridges or seams that Defendant CONVATEC said, without any
19 scientific evidence, could cause irritation, anal fissures, pressure ulcers,
20 necrosis, and rectal bleeding.
- 21
- 22 D. Defendant CONVATEC taught its sales force to inform customers that
23 insertion and removal of the Flexi-Seal device was easier and more
24 comfortable for the patient than C.R. Bard's competing product (the
25 DigniCare SMS) because Flexi-Seal was not funnel-shaped with ribs.
26 Defendant CONVATEC made this representation without any scientific
27 evidence.
- 28

- 1 E. Defendant CONVATEC taught its sales force to inform customers that
2 the trans sphincteric zone on C.R. Bard's competing product (the
3 DigniCare SMS) was weaker in strength than on Flexi-Seal and could
4 therefore, unlike Flexi-Seal, easily get twisted or compressed and block
5 the flow of stool. Defendant CONVATEC made this claim without any
6 scientific evidence.
- 7
- 8 F. Defendant CONVATEC taught its sales force to inform customers that
9 while Flexi-Seal successfully eliminated catheter odor permeation to
10 levels below those that are humanly detectable, C.R. Bard's competing
11 product (the DigniCare SMS) had a Parylene coating which tended to
12 crack when flexed and therefore allowed for the easy passage of gases.
- 13
- 14 G. Defendant CONVATEC also taught its sales force to apprise customers
15 of the purported fact, again without any scientific evidence, that the
16 Flexi-Seal device was safer than competing products because the
17 retention balloon at the end of the silicone catheter was permanently
18 affixed and therefore could not come off while in the patient's anus (as it
19 could in competing devices) where it could migrate up the rectum. In
20 this regard, Defendant CONVATEC instructed its sales force to
21 demonstrate to customers how easily the Flexi-Seal device could be
22 inserted into and then pulled out of a funnel (which represented a
23 patient's anus) versus competing products which required 15 times the
24 force to remove from the funnel.
- 25
- 26 H. Defendant CONVATEC taught its sales force to inform customers that
27 the COMPANY's DuoDERM products (bandage dressings and sterile
28 hydrocolloid gels and pastes) would speed up the healing of wounds by a

1 factor of three and/or that DuoDerm provided “faster, better healing.”
2 There is no scientific evidence to back up either of these representations.
3

4 I. Defendant CONVATEC taught its sales force to inform customers that
5 the COMPANY’s DuoDERM Gel was an “intelligent” gel that could be
6 used on wet or dry wounds because the gel “knows” when to donate
7 moisture and when to pick up fluids. There is no scientific evidence to
8 back up the representation that the gel “knew” when to pick up fluids.
9

10 J. Defendant CONVATEC also taught its sales force to inform customers
11 that the COMPANY’s DuoDERM Gel could be used as a vehicle to
12 deliver medicine – that is, the sales force informed customer that their
13 clinicians were able to mix the DuoDERM Gel with lidocaine,
14 morphine, and similar medications for topical pain relief. This off label
15 marketing violated FDA regulations.
16

17 K. Defendant CONVATEC taught its sales force to inform customers that
18 the COMPANY’s AQUACEL products not only helped to speed the
19 healing of wounds but also that they reduced pain and otherwise added
20 to patient comfort. There is no scientific evidence to back up this
21 representation.
22

23 L. Although AQUACEL is designed for “draining or wet” wounds,
24 Defendant CONVATEC instructed its sales force to inform customers
25 that they could simply wet the AQUACEL dressing and then apply it to
26 dry wounds. There is no scientific evidence to back up this
27 representation.
28

\\

1 16. MS. AZARBARZIN raised questions about the propriety of the
2 foregoing marketing practices. Indeed, shortly before she was fired, MS.
3 AZARBARZIN raised a concern about an incident in which a customer re-inserted a
4 Flexi-Seal device into a patient who had previously had such a device in his rectum
5 for 29 days (pursuant to Defendant CONVATEC's recommendation, the hospital
6 removed the initial Flexi-Seal device on day 29, waited several days, and then
7 reinserted the second device). Reinsertion of the device caused the patient to suffer
8 an "adverse event" which included anal bleeding. MS. AZARBARZIN is informed
9 and believes, and thereon alleges, that Defendant CONVATEC failed to report this
10 and other similar "adverse events" regarding Flexi-Seal device through MedWatch,
11 the FDA Safety Information and Adverse Event Reporting Program, as required by
12 law.

13
14 17. Shortly before she was fired, MS. AZARBARZIN suffered a workers'
15 compensation injury and had to take a workers' compensation medical leave of
16 absence. At that time, her former supervisor expressly informed her that the
17 COMPANY "frowns upon people taking workers' compensation leave" and he
18 warned her that the COMPANY would "closely scrutinize" her. Notably, Defendant
19 CONVATEC failed to provide MS. AZARBARZIN with FMLA information as
20 required by the California Family Rights Act.

21
22 18. On the first day after MS. AZARBARZIN's workers' compensation
23 medical leave of absence ended, she attended the COMPANY's annual three day
24 conference. During the conference, MS. AZARBARZIN had a conversation with
25 Lucia Luce Quinn, Defendant CONVATEC's Senior Vice President for Human
26 Resources & Corporate Affairs. During their conversation, MS. AZARBARZIN
27 asked Ms. Quinn about her former supervisor, Mehran Mehrtash, who no longer
28 worked at the COMPANY. Ms. Quinn told MS. AZARBARZIN that his employment

1 with the COMPANY ended, because, as a “‘hot headed’ Middle Eastern man” – “you
2 know how they are” – “he dug his own grave.” MS. AZARBARZIN protested Ms.
3 Quinn’s disparaging and discriminatory remark saying that she was offended by Ms.
4 Quinn’s comment as she (MS. AZARBARZIN) was Middle Eastern having been
5 raised in Iran. As described in detail below, less than two days after her protests, the
6 COMPANY fired MS. AZARBARZIN.

7
8 19. On February 7, 2012, the final day of the COMPANY’s conference
9 (which was just three days after MS. AZARBARZIN returned to work (on modified
10 duty still wearing a back brace and subject to other medical restrictions) from her
11 workers’ compensation medical leave of absence), Defendant CONVATEC fired MS.
12 AZARBARZIN.

13
14 20. In explaining why it fired her (a 16 year employee) *just three days* after
15 she was released to return to work (on modified duty) from her workers’
16 compensation medical leave of absence and without giving her any type of notice and
17 opportunity to improve her performance, Defendant CONVATEC offered two
18 completely pretextual reasons. First, Defendant CONVATEC explained to MS.
19 AZARBARZIN that it was firing her because her vendor credentialing was not up-to-
20 date. This reason was clearly pretextual because MS. AZARBARZIN’s vendor
21 credentials had expired while she was on her workers’ compensation medical leave of
22 absence and she had not had time to renew those credentials. More importantly,
23 similarly-situated employees who had not taken a workers’ compensation medical
24 leave of absence and whose vendor credentials had expired were not fired. Indeed,
25 MS. AZARBARZIN is informed and believes, and thereon alleges, that, shortly after
26 she was fired, her supervisor went on a marketing call with a similarly situated co-
27 worker who had not gone out on a workers’ compensation medical leave of absence,
28 her supervisor discovered that the similarly situated co-worker’s vendor credentials

1 had expired, and her supervisor did not fire or otherwise discipline the co-worker – he
2 just told her to renew her credentials. Second, Defendant CONVATEC explained to
3 MS. AZARBARZIN that it was also firing her because some of the information she
4 had entered into the COMPANY's ORION system was not accurate. This reason was
5 also clearly pretextual because similarly situated co-workers who had *not* gone out on
6 a workers' compensation leave had also entered some inaccurate information into the
7 COMPANY's ORION system and they were not fired or otherwise disciplined – they
8 were just told to correct the inaccurate information. In addition to the foregoing, the
9 pretextual nature Defendant CONVATEC's decision to fire MS. AZARBARZIN and
10 the COMPANY's knowledge of wrongdoing can be inferred from the fact that it
11 asked MS. AZARBARZIN to sign a release waiving her right to sue it. See Cassino
12 v. Reichhold Chemicals, Inc., 817 F.2d 1338 (9th Cir. 1987) (holding that proposed
13 settlement agreement offered to employee by employer at time employment
14 relationship was terminated as part of severance pay package which would have
15 released employer of all potential claims against it by employee, including claims for
16 discriminatory acts that occurred at or before termination, was admissible in former
17 employee's discrimination action against employer).

18
19 21. MS. AZARBARZIN is informed and believes, and thereon alleges, that
20 defendants' decision to fire her was retaliatory conduct, which was motivated, in
21 whole or in part, by her (a) complaints and protests regarding the propriety of the
22 COMPANY's unlawful marketing practices, (b) complaints and protests regarding
23 Ms. Quinn's harassing and discriminatory comments regarding "hot headed" Middle
24 Easterners, and (3) suffering a workers' compensation injury and going out on a
25 workers' compensation medical leave of absence.

26 \\\

22. Prior to the filing of this action, MS. AZARBARZIN filed a complaint with the Department of Fair Employment and Housing (“DFEH”) alleging that the acts of defendants, and each of them, established a violation of the Fair Employment and Housing Act, Government Code Section 12900 *et. seq.*, and has received the requisite right to sue letters.

23. MS. AZARBARZIN has been generally damaged in an amount within the jurisdictional limits of this Court.

FIRST CAUSE OF ACTION

**DISABILITY DISCRIMINATION IN VIOLATION OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT**

[CAL. GOV'T CODE § 12940(a)]

(Against All Defendants)

24. MS. AZARBARZIN realleges and incorporates by reference paragraphs 1 through 23, as though set forth in full.

25. As alleged herein and in violation of California Government Code § 12940(a), defendants, and each of them, discriminated against MS. AZARBARZIN on the basis of her disability (whether actual, regarded/treated as, and/or record/history of a health impairment).

26. By the aforesaid acts and omissions of defendants, and each of them, MS. AZARBARZIN has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and other pecuniary loss not presently ascertained.

1 27. As a further direct and legal result of the acts and conduct of defendants,
2 and each of them, as aforesaid, MS. AZARBARZIN has been caused to and did suffer
3 and continues to suffer severe emotional and mental distress, anguish, humiliation,
4 embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature and
5 extent of said injuries is presently unknown to MS. AZARBARZIN. MS.
6 AZARBARZIN does not know at this time the exact duration or permanence of said
7 injuries, but is informed and believes and thereon alleges that some if not all of the
8 injuries are reasonably certain to be permanent in character.

9
10 28. MS. AZARBARZIN is informed and believes, and thereon alleges, that
11 the defendants, and each of them, by engaging in the aforementioned acts and/or in
12 authorizing and/or ratifying such acts, engaged in wilful, malicious, intentional,
13 oppressive and despicable conduct, and acted with wilful and conscious disregard of
14 the rights, welfare and safety of MS. AZARBARZIN, thereby justifying the award of
15 punitive and exemplary damages in an amount to be determined at trial.

16
17 29. As a result of defendants' acts and conduct, as alleged herein, MS.
18 AZARBARZIN is entitled to reasonable attorneys' fees and costs of suit as provided
19 in Section 12965(b) of the California Government Code.

20
21 **SECOND CAUSE OF ACTION**
22 **RETALIATION IN VIOLATION OF THE CALIFORNIA FAIR**
23 **EMPLOYMENT AND HOUSING ACT**

24 [CAL. GOV'T CODE § 12940(H)]

25 (Against All Defendants)

26
27 30. MS. AZARBARZIN realleges and incorporates by reference paragraphs
28 1 through 23, and 25 as though set forth in full.

1 31. As alleged herein and in violation of California Government Code
2 Section 12940(h), defendants, and each of them, retaliated against, discharged and
3 otherwise discriminated against MS. AZARBARZIN because she reported,
4 complained about, and otherwise opposed practices forbidden by California
5 Government Code §12940 et. seq., including, *inter alia*, the racially discriminatory
6 remarks by Ms. Quinn.

7
8 32. By the aforesaid acts and omissions of defendants, and each of them,
9 MS. AZARBARZIN has been directly and legally caused to suffer actual damages
10 including, but not limited to, loss of earnings and future earning capacity, attorneys'
11 fees, costs of suit and other pecuniary loss not presently ascertained.

12
13 33. As a further direct and legal result of the acts and conduct of defendants,
14 and each of them, as aforesaid, MS. AZARBARZIN has been caused to and did suffer
15 and continues to suffer severe emotional and mental distress, anguish, humiliation,
16 embarrassment, fright, shock, discomfort, anxiety, physical pain and suffering. The
17 exact nature and extent of said injuries is presently unknown to MS. AZARBARZIN.
18 MS. AZARBARZIN does not know at this time the exact duration or permanence of
19 said injuries, but is informed and believes and thereon alleges that some if not all of
20 the injuries are reasonably certain to be permanent in character.

21
22 34. MS. AZARBARZIN is informed and believes, and thereon alleges, that
23 the defendants, and each of them, by engaging in the aforementioned acts and/or in
24 authorizing and/or ratifying such acts, engaged in wilful, malicious, intentional,
25 oppressive and despicable conduct, and acted with wilful and conscious disregard of
26 the rights, welfare and safety of MS. AZARBARZIN, thereby justifying the award of
27 punitive and exemplary damages in an amount to be determined at trial.

1 35. As a result of defendants' acts and conduct, as alleged herein, MS.
2 AZARBARZIN is entitled to reasonable attorneys' fees and costs of suit as provided
3 in Section 12965(b) of the California Government Code.

4
5 **THIRD CAUSE OF ACTION**
6 **WRONGFUL TERMINATION AND OTHER ADVERSE EMPLOYMENT**
7 **ACTIONS IN VIOLATION OF PUBLIC POLICY**
8 **(Against All Defendants)**
9

10 36. MS. AZARBARZIN realleges and incorporates by reference paragraphs
11 1 through 23, 25, and 31 as though set forth in full.

12
13 37. As set forth herein, defendants, and each of them, wrongfully terminated
14 MS. AZARBARZIN's employment in violation of various fundamental public
15 policies of the State of California. These fundamental public policies are embodied
16 in, inter alia, the following California and Federal statutes and codes: (1) Sections
17 12940, *et. seq.* of the California Fair Employment and Housing Act; (2) Sections 132a
18 of the California Labor Code; (3) Sections 17200, *et seq.* of the California Business &
19 Professions Code; (4) 21 U.S.C. § 331 *et. seq.*; and (5) various other California and
20 Federal statutes and codes.

21
22 38. MS. AZARBARZIN is informed and believes, and thereon alleges, that
23 her termination was in retaliation for, inter alia, the following actions by MS.
24 AZARBARZIN due to her: (1) complaints and protests regarding the propriety of the
25 COMPANY's unlawful marketing practices, (2) complaints and protests regarding
26 Ms. Quinn's harassing and discriminatory comments regarding "hot headed" Middle
27 Easterners, and (3) suffering a workers' compensation injury and going out on a
28 workers' compensation medical leave of absence.

1 39. By the aforesaid acts and omissions of defendants, and each of them,
2 MS. AZARBARZIN has been directly and legally caused to suffer actual damages
3 including, but not limited to, loss of earnings, reliance damages, costs of suit and
4 other pecuniary loss in an amount not presently ascertained, but to be proven at trial.
5

6 40. As a further direct and legal result of the acts and conduct of defendants,
7 and each of them, as aforesaid, MS. AZARBARZIN has been caused to and did suffer
8 and continues to suffer severe emotional and mental distress, anguish, humiliation,
9 shame, embarrassment, fright, shock, pain, discomfort and anxiety. MS.
10 AZARBARZIN does not know at this time the exact duration or permanence of said
11 injuries, but is informed and believes, and thereon alleges, that some if not all of the
12 injuries are reasonably certain to be permanent in character.
13

14 41. MS. AZARBARZIN is informed and believes and thereon alleges that
15 the defendants, and each of them, by engaging in the aforementioned acts and/or in
16 authorizing and/or ratifying such acts, engaged in wilful, malicious, fraudulent,
17 intentional, oppressive and despicable conduct, and acted with wilful and conscious
18 disregard of the rights, welfare and safety of MS. AZARBARZIN, thereby justifying
19 the award of punitive and exemplary damages in an amount to be determined at trial.
20

21 42. As a result of Defendants' conduct as alleged herein, MS.
22 AZARBARZIN is entitled to reasonable attorneys' fees and costs of suit as provided
23 in Section 1021.5 of the California Civil Procedure Code.
24

25 \\\

26 \\\

27 \\\

28 \\\

FOURTH CAUSE OF ACTION
VIOLATION OF CAL. LABOR CODE §1102.5
(Against All Defendants)

43. MS. AZARBARZIN realleges and incorporates by reference paragraphs 1 through 23, 25, 31, 37 and 38 as though set forth in full.

44. As alleged herein and in violation of California Labor Code Section 1102.5(c), Defendant CONVATEC retaliated against MS. AZARBARZIN for her protests and refusal to participate in activities that she reasonably believed to be fraudulent, misleading, deceitful and otherwise unlawful. Said activities would result in a violation of various California and/or federal statutes such as the following: (1) the Federal Food, Drug, and Cosmetic Act ("FD&C Act"), 21 U.S.C. §331 *et. seq.*; and (2) various other California statutes and codes.

45. By the aforesaid acts and omissions of defendants, and each of them, MS. AZARBARZIN has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings, reliance damages, costs of suit and other pecuniary loss in an amount not presently ascertained, but to be proven at trial.

46. As a further direct and legal result of the acts and conduct of defendants, and each of them, as aforesaid, MS. AZARBARZIN has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, shame, embarrassment, fright, shock, pain, discomfort and anxiety. MS. AZARBARZIN does not know at this time the exact duration or permanence of said injuries, but is informed and believes, and thereon alleges, that some if not all of the injuries are reasonably certain to be permanent in character.

1 47. MS. AZARBARZIN is informed and believes and thereon alleges that
2 the defendants, and each of them, by engaging in the aforementioned acts and/or in
3 authorizing and/or ratifying such acts, engaged in wilful, malicious, fraudulent,
4 intentional, oppressive and despicable conduct, and acted with wilful and conscious
5 disregard of the rights, welfare and safety of MS. AZARBARZIN, thereby justifying
6 the award of punitive and exemplary damages in an amount to be determined at trial.
7

8 48. The aforesaid acts and omissions of defendants, and each of them, justify
9 the imposition of any and all civil penalties pursuant to Cal. Labor Code §§ 1102.5(f).
10

11 49. As a result of Defendants' conduct as alleged herein MS.
12 AZARBARZIN is entitled to reasonable attorneys' fees and costs of suit as provided
13 in Section 1021.5 of the California Civil Procedure Code.
14

15 **FIFTH CAUSE OF ACTION**
16 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
17 (Against All Defendants)
18

19 50. MS. AZARBARZIN realleges and incorporates by reference paragraphs
20 1 through 23, 25, 31, 37, 38, and 44 as though set forth in full.
21

22 51. Defendants' conduct as described above was extreme and outrageous
23 and was done with the intent of causing MS. AZARBARZIN to suffer emotional
24 distress and/or with reckless disregard as to whether MS. AZARBARZIN would
25 suffer emotional distress.

26 \\\

27 \\\

1 52. By the aforesaid acts and omissions of defendants, as aforesaid, MS.
2 AZARBARZIN has been caused to and did suffer and continues to suffer severe
3 emotional and mental distress, anguish, humiliation, embarrassment, fright, shock,
4 pain, discomfort and anxiety. MS. AZARBARZIN does not know at this time the
5 exact duration or permanence of said injuries, but is informed and believes and
6 thereon alleges that some if not all of the injuries are reasonably certain to be
7 permanent in character.

8
9 53. MS. AZARBARZIN is informed and believes and thereon alleges that
10 the defendants, and each of them, by engaging in the aforementioned acts and/or in
11 authorizing and/or ratifying such acts, engaged in wilful, malicious, fraudulent,
12 intentional, oppressive and despicable conduct, and acted with wilful and conscious
13 disregard of the rights, welfare and safety of MS. AZARBARZIN, thereby justifying
14 the award of punitive and exemplary damages in an amount to be determined at trial.

15
16 **SIXTH CAUSE OF ACTION**
17 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

18 (Against All Defendants)

19
20 54. MS. AZARBARZIN realleges and incorporates by reference paragraphs
21 1 through 23, 25, 31, 37, 38, and 44 as though set forth in full.

22
23 55. In the alternative, defendants' conduct, as alleged above, was done in a
24 careless or negligent manner, without consideration for the effect of such conduct
25 upon MS. AZARBARZIN'S emotional well-being.

26 \\\

27 \\\

56. By the aforesaid acts and omissions of defendants, and each of them, MS. AZARBARZIN has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. MS. AZARBARZIN does not know at this time the exact duration or permanence of said injuries, but is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

PRAYER FOR RELIEF

WHEREFORE, MS. AZARBARZIN prays for judgment against Defendants as follows:

1. General damages in an amount to be proved at trial;
2. Special damages in an amount to be proved at trial;
3. Punitive damages in an amount appropriate to punish Defendants and to make an example of Defendants to the community;
4. Civil Penalties pursuant to Section 1102.5(f) of the California Labor Code;
5. Reasonable attorneys' fees;
6. Costs of suit;
7. Interest;
8. For such other relief as the Court deems proper.

DATED: August 1, 2012

HELMER • FRIEDMAN, LLP

By:

Andrew H. Friedman, P.C.
Attorneys for Plaintiff
KATHY AZARBARZIN

1 **PLAINTIFF'S DEMAND FOR JURY TRIAL**

2

3 Plaintiff KATHY AZARBARZIN hereby demands a trial by jury.

4

5 DATED: August 1, 2012

 HELMER • FRIEDMAN, LLP

7

8 By: 

 Andrew H. Friedman, P.C.
 Attorneys for Plaintiff
 KATHY AZARBARZIN

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28