

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

JOHN GORMAN,  
Plaintiff,

-against-

COVIDIEN SALES, LLC, d/b/a COVIDIEN,  
and DALE KELLY,

Defendants.

-----X

To the above-named Defendant(s)

Index No.  
Date of Filing:  
Plaintiff's designate New York  
County as the place of trial.  
The basis of venue is Plaintiff's  
residence

**SUMMONS**

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney(s) within twenty days after the services of this summons exclusive of the day of service, where service is made by delivery upon you personally within the state, or within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Hempstead, NY

August 9, 2013

Richard Washington  
Richard Washington, Esq.  
THE CHANDLER LAW FIRM, PLLC  
14 Front Street, Suite 105  
Hempstead, New York 11550  
(516) 280-8713

SUPREME COURT OF THE STATE OF NEW YORK  
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JOHN GORMAN,

Plaintiff,

Index No.

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and DALE KELLY,

Defendants.  
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**COMPLAINT**

**Jury Trial**  
**Demanded**

Plaintiff, by and through his attorney, Richard J. Washington, alleges on information and belief his complaint against the Defendants as follows:

**NATURE OF ACTION**

1. This action seeks to recover compensatory and punitive damages for military status discrimination, medical disability discrimination, retaliation, and intentional infliction of emotional distress committed by Defendants and their agents against Plaintiff.

**PARTIES**

2. Plaintiff, John Gorman, is a citizen of New York State, residing in New York County.

3. Defendant, Covidien Sales, LLC (hereinafter "Covidien"), employed plaintiff. Covidien is a global healthcare products corporation with offices worldwide; Covidien conducts business in New York State, New York City, and Long Island, New York, and this Court has jurisdiction pursuant to C.P.L.R § 302.

4. Defendant, Dale Kelly (hereinafter "Defendant Kelly") is the Regional Sales Manager for Covidien, supervising employees in New York City and Long Island, New York.

5. At all times referenced herein, Defendant Kelly was acting within the scope of his employment.

6. Plaintiff is a person within the meaning of Executive Law § 292(1) and New York City Administrative Code § 8-102(1).

7. Plaintiff is a veteran with military status within the meaning of Executive Law § 292(28), having served in the United States Navy between 1987 and 1991.

8. Plaintiff is disabled within the meaning of Executive Law § 292(21) and New York City Administrative Code § 8-102(16) in that Plaintiff suffers from Post Traumatic Stress Disorder (hereinafter “PTSD”).

9. At times relevant hereto, Plaintiff had and has the skill, experience, education and job-related requirements to perform the essential functions of his employment position within the meaning of state and city law.

10. Covidien is an employer within the meaning of Executive Law § 292(5) and New York Administrative Code § 8-102(5), conducting business and maintaining offices and employees within New York City and New York State.

#### **STATEMENT OF FACTS**

11. In or around December 1999, Plaintiff began working for Covidien as a salesperson.

12. As an employee for Covidien, Plaintiff received numerous internal corporate awards for his job performance prior to 2013.

13. Last year, Plaintiff sold millions of dollars in products for Covidien and exceeded the corporate goal for sales.

14. On or about October 1, 2012, Defendant Kelly began supervising the Plaintiff.

15. On or about November 13, 2012, the Plaintiff received the highest possible performance evaluation from Covidien for the end of the fiscal year (a copy of Plaintiff's 2012 performance evaluation is annexed hereto as Exhibit 1).

16. On or about January 1, 2013, Plaintiff received merit-based Level Promotion, a raise in base pay, and a letter of commendation from Covidien's Vice President of Sales (a copy of a commendation letter from Covidien Vice President of Sales is annexed hereto as Exhibit 2).

17. The Plaintiff is assigned a cell phone issued and paid for by Covidien.

18. Covidien operates an Integrity Helpline, which is operated by Covidien and designated as a method for employees to report concerns regarding compliance at Covidien.

19. Covidien has further established an Office of the Ombudsman – a Covidien employee who is an independent and impartial resource with whom employees may raise and address their compliance concerns.

20. Plaintiff has made reports to the Ombudsman in the past, specifically Plaintiff reported a conflict of interest regarding a 980,000 dollar product sale, which was preceded by an international trip and charitable donations to an organization linked to the buyer in said sale.

21. On or about May 13, 2013, Plaintiff and Defendant Kelly had a discussion during lunch in which Defendant Kelly made disparaging remarks concerning individuals currently serving in the military and suffering from PTSD.

22. During this conversation, Plaintiff noted that he is a Navy Veteran who served in Operation Desert Storm; Plaintiff further noted that he had difficulty following his service and understands the problems associated with PTSD.

23. During this same conversation, Defendant Kelly replied in sum and substance that Plaintiff and other veterans suffering from PTSD were weak tools of the oil companies who can't handle the stresses of life.

24. Defendant Kelly further stated that no one drafted the Plaintiff, and the Plaintiff deserves what he gets.

25. Defendant Kelly stated that Plaintiff and others suffering from PTSD were a bunch of babies.

26. Shortly thereafter, during the same conversation, Defendant Kelly questioned the Plaintiff's fitness for the job; Defendant Kelly stated in sum and substance that he thought military guys like Plaintiff were organized and go-getters.

27. On or about May 14, 2013, Defendant Kelly instructed the Plaintiff to breach SUNY Downstate hospital policy, which resulted in Plaintiff being banned from SUNY Downstate Hospital and losing the sales opportunities associated with that account.

28. On or about May 16, 2013, three days after the above-described conversation, the Plaintiff received an electronic mail correspondence from Defendant Kelly listing "areas of concern" with Plaintiff's job performance.

29. At the time Plaintiff received the "areas of concern" correspondence, Plaintiff had exceeded his sales goals on sensors and was the top performing salesperson in the region.

30. Plaintiff had never received an "areas of concern" correspondence prior to May 16, 2013.

31. Defendant Kelly arranged a meeting with the Plaintiff, scheduled for on or about June 7, 2013.

32. At the meeting, Defendant Kelly told the Plaintiff in sum and substance, you may have survived the Gulf War, but you won't survive this.

33. Also during this meeting, Defendant Kelly presented the Plaintiff with a Performance Improvement Plan (hereinafter "PIP"), a disciplinary document which subjects the Plaintiff to termination (a copy of the PIP is annexed hereto as Exhibit 3).

34. During this same meeting, Defendant Kelly approached the Plaintiff and stood inches away from the Plaintiff's face while stating in sum and substance, come on tough guy.

35. Plaintiff smelled alcohol on Defendant Kelly's breath.

36. Plaintiff had never been placed on a PIP prior to the June 7, 2013, meeting with Defendant Kelly.

37. The Plaintiff reported this misconduct to the Ombudsman.

38. Plaintiff used his Covidien-issued cellphone to make this complaint.

39. The Plaintiff gave his name when he placed the call to the Ombudsman reporting the aforementioned misconduct.

40. Defendant Kelly continued to supervise plaintiff despite Plaintiff's complaint.

41. Plaintiff began experiencing an increased frequency in anxiety, fear, mental anguish, migraine headaches, and nightmares as a result of Defendant Kelly's statements and aggressive behavior.

42. Plaintiff began treatment with mental health professionals due to the exacerbation of Plaintiff's PTSD as a result of the described discrimination and the hostile work environment.

43. Plaintiff was placed on a battery of medication because the symptoms of PTSD were exacerbated.

44. Plaintiff took a leave of absence from Covidien on or about June 12, 2013.

45. On or about June 18, 2013, Plaintiff, through the undersigned, submitted correspondence to Covidien detailing Defendant Kelly's misconduct and threatening behavior towards plaintiff.

46. Plaintiff returned to work on or about July 1, 2013.

47. On or about August 1, 2013, Covidien refused to substantiate Plaintiff's internal complaint against Defendant Kelly.

48. Plaintiff's performance has been subject to enhanced and inaccurate scrutiny from Covidien since his initial report and return from the previously mentioned medical leave of absence, including but not limited to, negative evaluations and a negative mischaracterizations of Plaintiff's job performance by Defendant Kelly and Defendant Mullen.

49. The Defendants have not followed the course of action set forth in the PIP, and have continuously changed the expectations placed upon the plaintiff.

50. The Defendants reduced Plaintiff's sales opportunities resulting in lost income from sales commissions.

51. Plaintiff has suffered discrimination, retaliation, disparate treatment and endured a hostile work environment as a result of changes in the terms, conditions and privileges of his employment.

52. As a result of the Defendants' material adverse acts as described above, Plaintiff has suffered damage, including without limitation, deprivation of income and benefits, loss of future income and benefits, loss of career, damage to reputation, emotional distress, mental anguish and constructive termination.

53. The Defendants have acted willfully, with malice and with reckless indifference to plaintiff's statutory rights.

**AS AND FOR A FIRST  
CAUSE OF ACTION  
(New York State Human Rights Law - Discrimination)**

54. Plaintiff repeats and realleges each of the foregoing allegations as if fully restated herein.

55. Plaintiff is an individual with a disability under the New York State Executive Law.

56. Notwithstanding his disability, the Plaintiff performed and continues to perform his duties and responsibilities and exceeds the goals set by Covidien.

57. The Defendants became aware of Plaintiff's disability.

58. Defendants discriminated against Plaintiff because of Plaintiff's disability and/or because Plaintiff had a record of disability and/or because Plaintiff was regarded as having a disability.

59. Plaintiff complained of the discrimination and hostile work environment, yet Defendants refused to take remedial or preventative action.

60. By their actions, Defendants violated the New York State Executive Law § 290, et seq., commonly known as the New York Human Rights Law.

61. As a result of Defendants' discrimination against him, Plaintiff has suffered damage as described above in an amount in excess of the jurisdictional limits of all other Courts which may have subject matter jurisdiction hereof.



**AS AND FOR A SECOND  
CAUSE OF ACTION  
(New York State Human Rights Law - Discrimination)**

62. Plaintiff repeats and realleges each of the foregoing allegations as if fully restated herein.

63. Plaintiff is a United States Navy veteran and therefore is an individual with military status under the New York State Executive Law.

64. Defendants discriminated against Plaintiff because of Plaintiff's military status and/or because Plaintiff had a military status and/or because Plaintiff was regarded as having a military status.

65. Plaintiff complained of the discrimination and hostile work environment, yet Defendants refused to take remedial or preventative action.

66. By their actions, Defendants violated the New York State Executive Law § 290, et seq., commonly known as the New York Human Rights Law.

67. As a result of Defendants' discrimination against him, Plaintiff has suffered damage as described above in an amount in excess of the jurisdictional limits of all other Courts which may have subject matter jurisdiction hereof.

**AS AND FOR A THIRD  
CAUSE OF ACTION  
(New York State Human Rights Law – Retaliation)**

68. Plaintiff repeats and realleges each of the foregoing allegations as if fully restated herein.

69. Plaintiff's report to the Ombudsman regarding the Defendants' discrimination and hostile work environment was Plaintiff's opposition to the Defendants' practices which are forbidden under New York State Executive Law § 296.

70. Plaintiff was subjected to retaliation from the Defendants in violation of New York State Executive Law § 296.

71. The Defendants engaged in retaliatory conduct which caused the Plaintiff to be demoralized, demeaned and humiliated in the hope that he would quit his position and/or to create a pretext as a basis upon which to discharge him.

72. By its retaliation, the Defendants failed to remedy or prevent, and indeed exacerbated the hostility, vindictiveness and nature of the Plaintiffs' work environment, although it knew, or in the exercise of reasonable care, should have known of the retaliation and its effect upon the Plaintiff.

73. As a result of Defendants' retaliation against him, Plaintiff has suffered damage as described above in an amount in excess of the jurisdictional limits of all other Courts which may have subject matter jurisdiction hereof.

**AS AND FOR A FOURTH  
CAUSE OF ACTION  
(New York City Human Rights Law - Discrimination)**

74. Plaintiff repeats and realleges each of the foregoing allegations as if fully restated herein.

75. Plaintiff has a disability or impairment within the definition of the New York City Administrative Code § 8-102(16), to wit, PTSD.

76. Notwithstanding his disability, the Plaintiff performed and continues to perform his duties and responsibilities and exceeds the goals set by Covidien.

77. Defendants discriminated against Plaintiff because of Plaintiff's disability and/or because Plaintiff had a record of disability and/or because Plaintiff was regarded as having a disability.

78. Plaintiff complained of the discrimination and hostile work environment, yet Defendants refused to take remedial or preventative action.

79. By its actions, Defendants have violated the New York City Administrative Code § 8-101, et seq., commonly known as the New York City Human Rights Law.

80. As a result of Defendants' discrimination against him, Plaintiff has suffered damage as described above in an amount in excess of the jurisdictional limits of all other Courts which may have subject matter jurisdiction hereof.

**AS AND FOR A FIFTH  
CAUSE OF ACTION  
(New York City Human Rights Law – Retaliation)**

81. Plaintiff repeats and realleges each of the foregoing allegations in paragraphs as if fully restated herein.

82. Plaintiff's report to the Ombudsman regarding the Defendants' discrimination and hostile work environment was Plaintiff's opposition to the Defendants' practices which are forbidden under New York City Administrative Code § 8-107(1).

83. Plaintiff was subjected to retaliation from the Defendants in violation of New York City Administrative Code § 8-107(7).

84. The Defendants engaged in retaliatory conduct which caused the Plaintiff to be demoralized, demeaned and humiliated in the hope that he would quit his position and/or to create a pretext as a basis upon which to discharge him.

85. By its retaliation, the Defendants failed to remedy or prevent, and indeed exacerbated the hostility, vindictiveness and nature of the Plaintiffs' work environment, although it knew, or in the exercise of reasonable care, should have known of the retaliation and its effect upon the Plaintiff.

86. As a result of Defendants' retaliation against him, Plaintiff has suffered damage as described above in an amount in excess of the jurisdictional limits of all other Courts which may have subject matter jurisdiction hereof.

**AS AND FOR A SIXTH  
CAUSE OF ACTION  
(Intentional Infliction of Emotional Distress)**

87. Plaintiff repeats and realleges each of the foregoing allegations as if fully restated herein.

88. The defendants' conduct toward Plaintiff was so outrageous and shocking that it exceeded all reasonable bounds of decency as measured by what the average member of the New York County community would tolerate.

89. As a result of Defendants' voluntary and intentional and/or reckless conduct, Plaintiff suffered severe emotional distress, including continuing depression and aggravation of his pre-existing PTSD, nightmares, mental anguish, loss of enjoyment of life, and also humiliation, anxiety and fear.

90. The Defendants' intentional and/or reckless conduct was such that the defendants knew that it was substantially certain that Plaintiff would suffer severe emotional distress, or the Defendants recklessly and with utter disregard for the consequences of their actions, caused

Plaintiff to suffer severe emotional distress in an amount in excess of the jurisdictional limits of all other Courts which may have subject matter jurisdiction hereof.

**PRAYER AND RELIEF**

**WHEREFORE**, Plaintiff prays that a) the court accept jurisdiction over this matter b) impanels and charges a jury with respect to the causes of action; c) awards judgment against the Defendants as follows: i) for each Cause of Action, compensatory damages in an amount to be determined at trial; ii) punitive damages in an amount to be determined at trial; iii) reasonable attorneys' fees, costs, interest, and disbursements of this action; and d) Granting such other and further relief as this Court deems just and proper.

Dated: New York, New York  
August 9, 2013

Respectfully yours,

BY: Richard Washington  
Richard Washington, Esq.  
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To: Rebecca E. Goldstein  
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