

Brown, LLC

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JIM MCGOWAN,

Plaintiff,

v.

**ELECTRIFAI, LLC, and EDWARD
SCOTT,**

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
HUDSON COUNTY

Civil Action

Docket No. _____

COMPLAINT AND JURY DEMAND

Plaintiff Jim McGowan by and through his undersigned counsel Brown, LLC, alleges as follows:

PRELIMINARY STATEMENT

1. Defendant ElectrifiAi, LLC is a hotbed of fraud and lies made to investors, clients and employees about everything from its revenue to non-existent products, its capabilities and inventory.

2. The fraud at ElectrifiAi runs deep, and so does the consequence for confronting the company about the fraud.

3. Any individual who confronts the company about the pervasive fraud is swiftly retaliated against.

4. Consistent with its pervasive fraudulent conduct, the company has a litany of feeble pretexts it uses for the swift retaliation.

5. Within days, if not hours, of complaining the Defendants take retaliatory acts against complainants as detailed herein.

6. ElectrifiAi, LLC provides artificial intelligence and machine learning consulting services to clients worldwide. ElectrifiAi's CEO Edward Scott and other company executives repeatedly made false and misleading statements about the company's revenue and product portfolio, to attract clients and investors.

7. Plaintiff McGowan opposed the fraud. In retaliation, CEO Scott verbally threatened him with termination and systematically ostracized him from the company.

8. Defendants demoted Plaintiff from Head of Product and removed him from earning commissions on over a dozen accounts he had spearheaded.

9. On April 8, 2021, after Defendants received a letter from Plaintiff's counsel to cease and desist in perpetrating their fraud and stating that Plaintiff will not lie on behalf of the company, Defendants froze Plaintiff out from the company and constructively terminated him.

10. Most of the allegations in this complaint are corroborated by Joe Kozak, who was Senior Vice President, Head of Sales. Mr. Kozak is commencing a separate action involving much of the same allegations herein.

11. Plaintiff brings this action for unlawful retaliation and employment discrimination under the New Jersey Conscientious Employee Protection Act, N.J. Stat. Ann. §§ 34:19 *et seq*, and request a judgment granting the fullest scope of remedies available under the law, including compensatory and punitive damages, backpay, benefits, reinstatement, and attorney's fees and costs.

PARTIES

12. Defendant ElectrifiAi, LLC, is a New Jersey Limited Liability Company with a principal place of business located at 10 Exchange Place, Jersey City, NJ 07302.

13. Defendant Edward Scott resides in Connecticut and is the CEO of Defendant ElectrifiAi, LLC. Virtually all of the fraud and retaliatory acts described in this complaint were performed under Scott's knowledge and direction.

14. Plaintiff Jim McGowan resides in Flemington, New Jersey 08822. From approximately March 2020, Plaintiff was employed by Defendants as Senior Vice President. He was constructively discharged on April 8, 2021.

STATEMENT OF FACTS

15. Plaintiff was employed at ElectrifiAi as Senior Vice President - Head of Cloud Partnerships. Within a few months of his hiring, Plaintiff was promoted to the additional role of Head of Product. Later, Plaintiff was given the additional responsibility of Head of Strategic Accounts.

16. Plaintiff was a member of ElectrifiAi's management committee and senior company leadership, and thus had access to weekly leadership meetings. Plaintiff also attended board meetings and investor calls.

17. Plaintiff witnessed Defendant Scott and the executive committee (comprised of Scott, CTO Luming Wang, CIO Gregg McNulty, and corporate counsel Diane Clark), routinely providing false information to clients, investors, and the board of directors, in an effort to raise sales and/or capital, as described below.

The “1000+ Models” Claim

18. As early as April 2020, Scott and the marketing department began stating to the board, clients, and investors that ElectrifiAi had an “existing library of 1,000 pre-built machine learning models.” This claim was plastered on virtually all marketing and promotional materials from ElectrifiAi, including the company website.

19. However, the company’s internal count of all models at the company, including those still in development or in early planning stages, was less than 120.

20. ElectrifiAi’s marketing materials to clients and investors also contained a laundry list of industry-specific models ElectrifiAi claimed to be pre-built and ready to use.

21. But, most models on this list simply did not exist, or needed several months of additional work to function as promised.

22. Upon information and belief, the following models were falsely marketed to clients and investors as pre-built and ready to deploy:

<i>Industry</i>	<i>Models</i>
Healthcare	ImageAi for Medical Research, ImageAi for Anomaly Measurement & Risk, Cost Prediction, Collections Management, Diagnostic Solutions, Text Mining Clinician Notes
Insurance	Agent Effectiveness, Call Center Attribution, NLP for Claims Notes, In-Person Service Optimization
Federal and State	Operational Analytics, Enrollment Reconciliation, Program Integrity
Education	Attendance Propensity, Matriculation Propensity, Student Attrition Mitigation, Alumni Relations Optimization
Travel, Transportation, and Hospitality	Compensation Recommendations, Downward Migrator Control, Missed Destination Searches, Missed Segments, Missed Redemption Searches, Cancellation Management, Punctuality Management, Crew Risk Scoring, Aircraft Risk Scoring, Rebooking Prioritization
Defense and Security	ImageAi for Physical Security, Signal Sensors (Social Media Monitoring), Anomaly Detection in NIDS
Consumer Products	Sequencing & Treatment Optimizations, Spend Stimulation, Store Planogram, Business Compliance Assurance

Retail & E-Commerce	Behavioral Analytics
Engineering and Construction	Labor Utilization
Oil and Gas	Labor Productivity Analytics, Labor Profitability Analytics, ImageAi for Workplace Safety
Chemicals	Spend Analytics for Vendor Leverage, Product Relevance & Density, Price Tiering
Life Sciences	ImageAi for Drug Research, ImageAi for AI/ML Medical Research

Falsified Annual Revenue for FY 2020

23. Scott and the executive committee also represented to the board, investors, and clients that, in 2020, the company had a revenue ranging from \$30 to \$50 million, when the true revenue was closer to \$20 million.

24. Starting in August 2020, in a bid to raise new capital, the executive committee began hosting numerous presentations to potential investors. Scott called this the “Executive Roadshow.”

25. At these presentations, Scott told investors that ElectrifiAi would end the year with an annual revenue of \$40M.

26. When asked by prospects about the company’s revenue, Scott often responded that “You should think of ElectrifiAi as a \$50 million company.”

27. In February 2021, Plaintiff attended two calls with private investment firms.

28. In the first call, Scott reported an annual revenue of \$30M for fiscal year 2020.

29. Just a few days later during the second call, Scott reported annual revenue back at \$40M for fiscal year 2020.

30. Additionally, at board meetings and management committee meetings throughout 2020, Scott repeatedly forecasted that the company would reach at least \$30M in revenue by the end of the year.

31. Internally, however, Scott and Wang had repeatedly told the management committee that ElectrifiAi had around \$19M in revenue for fiscal year 2020.

32. Given that no net new business was closed in quarter 4, there was no factual basis for Scott's claim that the company's revenue was remotely close to \$30 to \$50 million.

Misrepresentations about the Company's Client Base

33. ElectrifiAi held monthly board of directors meetings, where the company discussed, *inter alia*, the company's plans, revenue estimates, and upcoming projects.

34. At the May 29, 2020 board meeting, Scott stated that ElectrifiAi was on track to complete an \$840,000 contract with ██████████¹ by the end of the quarter.

35. Prior to the meeting, however, ██████ had advised that they had signed with a competitor and thus would not be working with ElectrifiAi.

36. Thus the representation regarding ██████████ made at the board meeting was outright and knowingly false.

37. The ██████ misrepresentation was repeated in the July 1, 2020 Board presentation.

38. Additionally, at a December 2020 board meeting, Scott stated that he had signed a large mobile carrier called ██████ as an account for Q4, when at the time ██████ had not signed any contract with ElectrifiAi.

¹ Redactions are at the request of Defendant – although it is Plaintiff's position that redactions are not needed since the complaint seeks to address and correct Defendants' outright false representations. Defendants can have no expectation of confidentiality regarding their own fraudulent statements.

39. Similar misrepresentations were made to potential clients. For example, in June and July 2020, Scott represented, in a sales pitch emails to [REDACTED] and [REDACTED] that ElectrifiAi had over 200 hospitals as customers, when in fact the number was no higher than 111.

Misrepresentations about Specific Products

40. Plaintiff, as Head of Product, was tasked with developing the machine learning models for each client's needs.

41. Plaintiff repeatedly found that clients had been promised ready-to-use products which simply did not exist.

42. Plaintiff was nonetheless pressured to "close" these accounts.

43. Additionally, Plaintiff witnessed executive committee members routinely exaggerating or outright lying about the company's products, experience, and capabilities.

44. On September 21, 2020, Scott and CTO Wang told [REDACTED] an IT consulting company, that ElectrifiAi had a model for unemployment and insurance fraud surveillance, and had provided such services for multiple states, including Vermont and Rhode Island.

45. In fact, ElectrifiAi had zero experience or models for detecting unemployment and insurance fraud and had never done any work for any states.

46. Throughout 2021, CTO Wang, at Scott's direction, falsely represented to numerous potential clients that he had "invented" the algorithms that Amazon uses to price their 20 million SKUs.

47. In November 2020, the Amazon misrepresentation helped persuade [REDACTED], a [REDACTED] company, to sign a \$100,000 pilot contract with ElectrifiAi.

48. In August 2020, [REDACTED] approached ElectrifiAi about using an algorithm to identify the best rest stop sites along a highway.

49. At a sales pitch call to [REDACTED] CIO McNulty represented that Opera Solutions, ElectrifiAi's predecessor, had created an algorithm for [REDACTED] to determine where to place certain clinics based on factors such as zoning laws, available parking, and night-time lighting. In truth, the algorithm had considered store foot traffic only, not any other factors.

50. In September 2020, Scott informed [REDACTED] that ElectrifiAi had numerous machine learning products for hospitals, including models for optimized patient engagement and reducing claims denial. In truth, ElectrifiAi did not have any models for patient engagement or claims denial.

51. In December 2020, Scott informed [REDACTED] that ElectrifiAi's annual revenue exceeded \$40M, in an attempt to get [REDACTED] to sign a reseller agreement. [REDACTED]'s CEO requested an audited financial report, but Scott failed to produce it. As a result, the reseller agreement was not closed.

ElectrifiAi's Retaliation Against Plaintiff

52. Throughout 2020 and 2021, Plaintiff attended weekly meetings with the management committee, which included Scott and the entire executive committee.

53. In late September 2020, Plaintiff confronted Scott and the executive committee about the misrepresentations they made to [REDACTED]

54. Specifically, Plaintiff stated that ElectrifiAi had *never* created or deployed a model for detecting unemployment insurance fraud in any context, and explained that progress on the [REDACTED] contract was stalling because Scott had pitched a non-existent product.

55. In response, Scott and CIO McNulty told Plaintiff words to the effect that he would not be at the company for long if he did not go along with the fraud.

56. In a November 2020 call with Scott, Plaintiff stated that he disagreed with the misleading statements made to [REDACTED]

57. When Plaintiff explained that the product advertised to [REDACTED] simply did not exist, Scott told Plaintiff to “sell them something.” Plaintiff refused to close the deal.

58. Plaintiff also raised the misrepresentations regarding the [REDACTED] model made to [REDACTED] at the weekly management committee meetings in December 2020.

59. On several other occasions throughout 2020 and 2021, Plaintiff again expressed his opposition to the misinformation Scott gave to clients and prospective investors.

60. In retaliation for Plaintiff’s continued opposition to their fraud, ElectrifiAi demoted Plaintiff from Head of Product in February 2021.

61. ElectrifiAi further stripped Plaintiff of commissions he would have received on multiple accounts.

62. On April 8, 2021, Plaintiff through counsel informed the company he would not participate in perpetuating false and misleading statements and that the conduct must cease and desist.

63. The very same day, Defendants froze Plaintiff out of access from the company’s computer systems.

64. Defendants then told employees, clients, and partners that Plaintiff was no longer at the company.

65. When confronted by counsel on the retaliatory termination, in a feeble pretext to try and mitigate damages, Defendants tried to walk back the discharge.

66. Defendants claimed that Plaintiff was with the company but did not assign him any work. Further, Defendants claimed that Plaintiff’s sole responsibility is to answer questions regarding this complaint.

67. By freezing Plaintiff out and eliminating all his alleged job responsibilities other than answering questions about this action, Defendants in fact terminated Plaintiff. Alternatively, Defendants constructively discharged Plaintiff.

**COUNT ONE:
 RETALIATION AGAINST PLAINTIFF JIM MCGOWAN IN VIOLATION OF
N.J. CONSCIENTIOUS EMPLOYEE PROTECTION ACT**

68. Plaintiff repeats and re-alleges the above paragraphs as if fully set forth herein.

69. New Jersey’s Conscientious Employee Protection Act (CEPA) “has been described as the most far reaching ‘whistleblowing statute’ in the nation.” Hernandez v. Montville Twp. Bd. Of Educ., 354 N.J. Super. 467, 473 (App. Div. 2002). It was “designed to provide broad protections against employer retaliation for employees acting within the public interest,” and is to be “construed liberally to effectuate its important social goal.” Id. at 473.

70. CEPA provides, in relevant part:

An employer shall not take any retaliatory action against an employee because the employee does any of the following:

a. Discloses, or threatens to disclose to a supervisor ... an activity, policy or practice of the employer, ... that the employee reasonably believes:

(1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer ...

(2) is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer ...

[...]

c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes:

- (1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer ... [or]
- (2) is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer

71. As described above, Plaintiff complained about and sought to stop the misrepresentations made to clients, investors, and board members.

72. Plaintiff's belief that the prolific misrepresentations to clients, investors, and board members violated numerous State and Federal laws, was objectively reasonable.

73. In retaliation, Defendants demoted Plaintiff, verbally harassed and ostracized him from the company, and barred him from receiving commissions on multiple accounts.

74. After Plaintiff sent Defendants a cease-and-desist letter through his attorneys, he was immediately frozen out of ElectrifiAi's computer systems and expelled from the company. Defendants severed Plaintiff's ability to contact his co-workers and clients, and informed them that Plaintiff was no longer with the company.

75. By reason of Defendant's illegal retaliatory actions, Plaintiff has been damaged and continues to be damaged in an amount to be determined at trial.

76. WHEREFORE, Plaintiff respectfully requests a judgment against Defendants, jointly, severally, and in the alternative, for compensatory and punitive damages, special damages, including but not limited to backpay and full benefits, attorney's fees and costs, and an award of such other and further relief as this Court may deem to be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all counts.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Jason T. Brown, Esq., is hereby designated as trial counsel for this matter.

CERTIFICATION OF ATTORNEY

I certify that the matter in controversy is not the subject of any other action or arbitration proceeding, now or contemplated, and that no other parties should be joined in this action. Rule 4:5-1.

Respectfully Submitted,

Brown, LLC

/s/ Jason T. Brown

Jason T. Brown (N.J. Bar # 3592-1996)

Chunsoo "Terence" Park

(pro hac vice application forthcoming)

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