

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

STEVE M. MCKEE,)	
)	
Plaintiff,)	
)	
v.)	1:06CV803
)	
NOVARTIS PHARMACEUTICALS)	
CORPORATION,)	
)	
Defendant.)	

ORDER

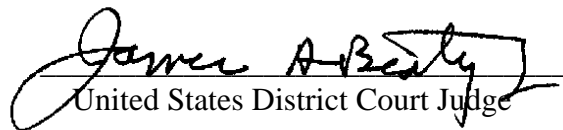
This matter is before the Court on a Motion to Dismiss [Document #10] filed by Defendant Novartis Pharmaceuticals Corporation (“Defendant”). Plaintiff Steve M. McKee (“Plaintiff”), a former employee of Defendant, brings this case alleging claims for wrongful discharge in violation of public policy and retaliation in violation of the “whistleblower” provisions of the False Claims Act, 31 U.S.C. § 3730(h). The Motion to Dismiss was referred to the Magistrate Judge for Recommendation, and on January 24, 2007, the Magistrate Judge conducted a hearing on the Motion to Dismiss and heard evidence, including the testimony of Plaintiff. The Magistrate Judge ultimately issued a Recommended Decision recommending that the Motion to Dismiss be granted, basing that determination in part on the testimony provided at the hearing. The Magistrate Judge characterized the testimony as in the nature of a Rule 12(e) “more definite statement.” However, Plaintiff has objected to the Recommended Decision on multiple grounds, contending primarily that this reliance on testimony was improper and had the effect of converting the motion into one for summary judgment without notice or an

opportunity to respond. To the extent that a more definite statement was needed, Plaintiff requests the opportunity to submit an Amended Complaint.

Having considered the unusual procedural posture of this case and the Objections that have been raised, the Court declines to adopt the Recommended Decision and will allow Plaintiff leave to file an Amended Complaint. The Motion to Dismiss as to the original Complaint will be denied, without prejudice to Defendant's ability to raise any of its arguments in response to the Amended Complaint. Any Motion to Dismiss as to the Amended Complaint will be considered directly by this Court, without any consideration of the evidence presented during the January 24, 2007 hearing.

IT IS THEREFORE ORDERED that Plaintiff must file an Amended Complaint within thirty (30) days of the date of this Order. If Plaintiff fails to file an Amended Complaint, this action will be dismissed without prejudice. Defendant's Motion to Dismiss as to the original Complaint [Document #10] is DENIED, without prejudice to Defendant raising any of its arguments in response to Plaintiff's Amended Complaint.

This, the 17 day of March, 2008.


United States District Court Judge