

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

HILDA L. SOLIS, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,

Plaintiffs,

v.

BRIGHTON MEDICAL CLINIC; LUITHUK ZIMIK, P.C.;
and LUITHUK ZIMIK, individually,

Defendant.

COMPLAINT

Plaintiffs Hilda L. Solis, Secretary of Labor, and the United States Department of Labor (collectively, the "Secretary"), by counsel, bring this action to obtain redress for the deprivation of Christian Martinez's federally protected rights as hereinafter alleged; to enjoin defendants from violating the provisions of section 11(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651-677) (the "Act"); and for all other appropriate relief, including without limitation the rehiring or reinstatement of Ms. Martinez to her former position with back pay and front pay, compensatory damages, and emotional distress damages.

1. This Court has subject matter jurisdiction under section 11(c)(2) of the Act, 29 U.S.C. §660(c)(2), and by 28 U.S.C. 1337 and 1345. Venue is proper here under 28 U.S.C. §1391(b).

2. The Secretary is informed and believes, and on that basis alleges, that Defendant, Brighton Medical Clinic ("BMC"), is a corporation whose principal office is located in Brighton, Colo. BMC provides internal medicine services to patients. To perform this function, BMC purchases and

obtains products and services that have been produced and transported in interstate commerce. Thus, BMC is engaged in a business affecting commerce, has employees, and is, thus, an employer within the meaning of § 3(5) of the Act, 29 U.S.C. §652(5).

3. The Secretary is informed and believes, and on that basis alleges, that at all material times, BMC has operated at 70 South 20th Avenue, Suite H, Brighton, Colo., 80601, within this Court's jurisdiction.

4. The Secretary is informed and believes, and on that basis alleges, that Defendant, Luithuk Zimik, P.C. ("Zimik, P.C."), is the corporate entity that owns BMC. At all material times, Zimik, P.C. has been incorporated in the State of Colorado, within this Court's jurisdiction.

5. The Secretary is informed and believes, and on that basis alleges, that Defendant, Dr. Luithuk Zimik ("Dr. Zimik") is, and has been at all material times, the sole proprietor and operator of Zimik, P.C. The Secretary is further informed and believes, and on that basis alleges, that Dr. Zimik controlled BMC's operations and made personnel decisions. Finally, the Secretary is informed and believes, and on that basis alleges, that Dr. Zimik resided in the State of Colorado at all material times and is subject to this Court's jurisdiction.

6. From approximately August 3, 2009, to October 30, 2009, BMC employed Ms. Martinez as a receptionist. She worked during this time at BMC's clinic located at 70 South 20th Avenue, Suite H, Brighton, Colo., 80601.

7. On or about October 13, 2009, Ms. Martinez filed a complaint with the Denver Area Office of the Occupational Safety and Health Administration ("OSHA"), alleging that BMC exposed its employees to various dangerous conditions in BMC's facility.

8. On or about October 14, 2009, OSHA informed BMC by facsimile and telephone transmissions that OSHA had received Ms. Martinez's October 13, 2009 complaint, but did not indicate who made that complaint.

9. Then, on or about October 26, 2009, Ms. Martinez faxed a letter to BMC in which she wrote that "after many failed attempts in trying to speak with my supervisor to correct many issues that have ar[isen] since my employment [there] have been concerns regarding office and patient safety." Ms. Martinez specified, in pertinent part, that BMC had allowed unsafe work conditions to exist in that boxes were unsafely placed throughout the clinic; telephones did not work properly; BMC did not provide employees with required personal protective equipment; and the locking mechanism on the clinic's main door was broken, exposing employees to injury.

10. The Secretary is informed and believes, and on that basis alleges, that on or about October 30, 2009, BMC terminated Ms. Martinez's employment because she complained to OSHA and then to BMC management about unsafe work conditions in the clinic. The Secretary is further informed and believes, and on that basis alleges, that Dr. Zimik decided to discharge Ms. Martinez.

11. On or about November 3, 2009, Ms. Martinez filed a complaint with the Occupational Safety and Health Administration, United States Department of Labor, alleging the discriminatory acts referred to above.

12. Defendants violated section 11(c)(1) of the Act, 29 U.S.C. §660(c)(1), by discharging Ms. Martinez, and by refusing to reinstate her unconditionally and by refusing to make restitution to her, because Ms. Martinez exercised the rights described above.

WHEREFORE, Plaintiffs pray for the following relief:

1. An order permanently enjoining Defendants and their officers, agents, and employees from violating the provisions of § 11(c)(1) of the Act;
2. An order directing Defendants to reinstate Ms. Martinez to her employment with full restoration of such seniority, status and other benefits as she would have received had her employment been continuous;
3. An order directing Defendants to make restitution to Ms. Martinez for lost wages or other benefits that resulted from Defendants' violation of the Act;
4. Compensatory damages for emotional distress according to proof at time of trial;
5. Costs;
6. Such other and further relief as the Court may deem just and proper.

PLAINTIFFS DEMAND TRIAL BY JURY.

Respectfully submitted.

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Solicitor of Labor

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/s/ Matthew B. Finnigan

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