

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

Civil Action No. 1:22-CV-01082- CMA-KLM

ANA NORIEGA,

Plaintiff,

v.

MARILLAC CLINIC, INC,

Defendant.

FOURTH AMENDED COMPLAINT

COMES NOW Plaintiff, Ana Noriega, by and through her attorneys, Robinson and Henry, P.C., and submits the following amended complaint:

PARTIES

1. Plaintiff Ana Noriega (“Noriega”) is a Hispanic female with dark skin and engaged in protected activity as stated herein.

2. Noriega is a citizen of the State of Colorado and resides at 2693 G ½ Road, Grand Junction, Colorado 81506.

3. Noriega worked at and for Marillac Clinic, Inc. (“Marillac” or “Defendant”).

4. Marillac is a nonprofit corporation incorporated in the State of Colorado with its principal place of business located at 2333 North 6th Street, Grand Junction, Colorado 81501.

5. At all relevant times, Marillac was an employer within the meaning of Colorado's Public Health Emergency Whistleblower Law, C.R.S. § 8-14.4-101, *et seq.* ("PHEW Law") and pursuant to C.R.S. § 24-114-101, *et seq.* ("Private Enterprise Employee Protection").

6. Marillac, based on information and belief, employed Noriega as a statutory employer under Title VII of the Civil Rights Act of 1964, §§ 2000e, *et seq.* ("Title VII") and 42 U.S.C. § 1981 ("Section 1981"). On information and belief, this defendant aided and abetted other defendants, and acted directly in the interests of other defendants in violating Noriega's rights under Title VII and Section 1981 and created and encouraged an atmosphere which fostered the discrimination, harassment and retaliation as stated herein. At all relevant times herein, Marillac employed over fifteen or more persons.

JURISDICTION AND VENUE

10. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because this matter presents a federal question arising under the laws of the United States.

11. The Court has supplemental jurisdiction of this case pursuant to 28 U.S.C. § 1367.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1)-(2) as the defendant resides in this judicial district and the events giving rise to this claim occurred in this judicial district.

FACTUAL ALLEGATIONS

13. Defendant discriminated against and harassed Noriega because of her race, color and/or national origin in violation of Title VII.

14. Defendant also retaliated against Noriega in violation of Title VII for engaging in protected conduct.

15. Noriega began working for the Defendant on or about March 23, 2020 at the Marillac Health – Warrior Wellness Center, located at 550 Warrior Way, Grand Junction, Colorado 81504.

16. The Warrior Wellness Center is a school-based health center, which receives funding from the Colorado Department of Public Health and Environment’s School-Based Health Center (“SBHC”) Program. School-based health centers include clinics or facilities authorized to provide clinical services under C.R.S. § 26-4-513 or authorized to apply for and receive medical assistance payments under a contract with the State of Colorado pursuant to C.R.S. § 25-20.5-502.

17. At all relevant times, the Warrior Wellness Center was operated by the Defendants.

18. At all relevant times, Ms. Noriega was a Program Coordinator at the Warrior Wellness Center.

19. While working for Defendant, Noriega experienced discrimination and harassment in the workplace because of her race, color and/or national origin.

20. Noriega was exposed to discriminatory and harassing conduct including upper management refusing to communicate with her and instead communicating solely with Noriega's white coworker.

21. Noriega engaged in protected conduct when she opposed this, and additional discriminatory and harassing conduct and reported to Human Resources Supervisor Kirstin Guptill ("Supervisor Guptill") that she believed that this conduct was because she is Hispanic on or about December 1, 2020.

22. As a form of discrimination, harassment and retaliation Defendant instructed Noriega not to communicate with persons essential to the duties of her job requirements.

23. As a form of discrimination, harassment and retaliation Defendant would not speak or communicate with Noriega, instead communicating through Noriega's white coworker.

24. As a form of discrimination, harassment and retaliation, upon information and belief, Defendant did not pay Noriega at the same rate as white employees with the same or similar job descriptions.

25. As a form of discrimination, harassment and retaliation on or about December 17, 2020, Defendant issued a written reprimand to Noriega, which Supervisor Guptill signed.

26. On or about December 18, 2020, Noriega again engaged in protected conduct when she provided a written complaint to Supervisor Guptill asserting that her

prior reprimand and the prior discriminatory and harassing conduct were because she is Hispanic.

27. As a form of discrimination, harassment, and retaliation on or about December 21, 2020, Defendant terminated Noriega's employment.

28. Defendant treated Noriega differently in the terms, conditions, and opportunities of her employment because of her race, color, national origin and/or protected conduct.

29. Defendant has actually and/or attempted to aid, abet, compel, coerce, and incite unlawful conduct stated herein.

30. The conduct of Defendant had the purpose or effect of substantially interfering with Noriega's work performance and objectively and subjectively caused Noriega harms and losses.

31. The conduct of Defendant was hostile, intimidating, and offensive and objectively and subjectively caused Noriega harms and losses.

32. While employed at the Warrior Wellness Center, Ms. Noriega reported the mishandling of government funds that were meant for the SBHC clinic. Specifically, on November 9, 2020 Ms. Noriega reached out to the Colorado Department of Health & Environment to report that Defendants billed her time and other employees of the Warrior Wellness Center to the SBHC grant, that was time not actually working for the SBHC clinic. On November 16, 2020, Ms. Noriega reported to the Colorado Department of Health & Environment that Defendants had purchased two new exam room tables under

the SBHC grant for the Warrior Wellness Center, but those new exam tables were placed in another non-SBHC clinic, while used exam beds were given to the SBHC clinic.

33. After, reporting the mishandling of funds, Ms. Noriega was retaliated against. In November 2020, when Ms. Noriega notified Ivan Coziahr at Marillac's Chief Operations Office that she had been exposed to COVID-19, and that she needed to quarantine, Ms. Noriega requested that she be allowed to work from home because other employees had been allowed to do so. Her request was denied.

34. Defendant also denied Ms. Noriega's request to use earned paid time off during her quarantine period, after she was told she needed a written order of quarantine from Mesa County Public Health before she would be allowed leave under C.R.S. § 25-1-506.

35. When Ms. Noriega returned from quarantine, in December 2020, Defendant began to assign her tasks that were outside of her job description and placed her at an elevated risk of contracting COVID-19, such as answering phones in a small, poorly ventilated office, which was in close proximity to her coworkers, despite being given a written letter from Ms. Noriega's doctor informing the Defendant that Ms. Noriega has several chronic health issues that increase her risk for severe COVID-91 infection.

36. Within weeks, Ms. Noriega was instructed by Defendant not to have any communication with the school principal, Lance Sellden, or the Media Director, Trey Downy. Communicating with these key staff members at the school was part of Ms. Noriega's job duties and outlined in her job description.

37. Ms. Noriega was treated differently than her coworkers, including having her tuition reimbursement request denied, while others were accepted.

38. When Ms. Noriega requested a reasonable accommodation to working from home because she was at a higher risk for COVID-19 because of underlying health conditions and her workspace was not compliant with social distancing requirements, her request was denied, and her employment was terminated three days later.

CONDITIONS PRECEDENT

39. As a result of the unlawful conduct described herein, Noriega timely and formally filed charges for discrimination, harassment and retaliation which are attached hereto as Exhibit 1 fully incorporated herein.

40. Noriega's charge of discrimination culminated into a "Notice of Right to Sue" letter which is attached hereto as Exhibit 2 and fully incorporated herein.

41. Noriega exhausted all necessary administrative requirements and remedies before filing this suit.

42. When relevant, the conduct herein constituted a continuing violation of Noriega's rights stated herein because the same is an ongoing and continual series of interrelated events.

43. Prior to filing this action, Noriega timely filed a Complaint with the Colorado Department of Labor and Employment ("CDLE") concerning the Defendant's violation of the PHEW Law. On November 2, 2022, the CDLE issued a Notice of Right to Sue to Noriega, and a Complaint was filed within ninety days of her receipt of that Notice. As such, the Plaintiff's administrative remedies have been adequately exhausted.

**COUNT I
HARASSMENT
(RACE/COLOR/NATIONAL ORIGIN UNDER TITLE VII)**

44. Noriega incorporates all other paragraphs as though fully set forth herein.

45. As set forth in Exhibit 1, race, color and/or national origin harassment was committed against Noriega which caused Noriega to be: (1) treated differently than others because of Noriega's race, color and/or national origin; (2) put in a disadvantageous position because of Noriega's race, color and/or national origin; and (3) exposed to intimidating and hostile work environment because of Noriega's race, color and/or national origin.

46. The unwelcomed race, color and/or national origin harassment affected a term, condition, or privilege of Noriega's employment in that it had the purpose or effect of interfering with Noriega's work performance for Defendant.

47. Moreover, the unwelcomed race, color and/or national origin harassment affected a term, condition, or privilege of Noriega's employment in that it was sufficiently severe or pervasive to alter the conditions of Noriega's employment and create an abusive, hostile, intimidating and offensive working environment because of Noriega's race, color and/or national origin. The harassment was subjectively intimidating and/or offensive to Noriega and would have been so intimidating and/or offensive to a reasonable person because of Noriega's race, color and/or national origin.

48. Defendant had actual and/or constructive notice of said unlawful conduct and failed to take prompt remedial action.

49. Defendant is thereby liable to Noriega under Title VII.

**COUNT II
DISCRIMINATION
(RACE/COLOR/NATIONAL ORIGIN UNDER TITLE VII)**

50. Noriega incorporates all other paragraphs as though fully set forth herein.

51. Noriega was qualified for her position at Defendant.

52. Defendant engaged in adverse employment actions against Noriega, including paying her less than other similarly situated employees, her supervisors refusing to communicate with her and termination because of her race, color and/or national origin.

53. Defendant treated Noriega less favorably than other workers because of her race, color and/or national origin.

54. The above actions by Defendant violated Title VII of the Civil Rights Act of 1964.

**COUNT III
RETALIATION
(RACE/COLOR/NATIONAL ORIGIN UNDER TITLE VII)**

55. Noriega incorporates all other paragraphs as though fully set forth herein.

56. Noriega engaged in protected opposition by addressing her assertions of discrimination based on race, color and/or national origin to Supervisor Guptill and other members of management on at least two occasions.

57. Defendant terminated Noriega's employment because she engaged in these protected activities.

58. A reasonable employee would have found the challenged action, termination, materially adverse.

COUNT IV
RACE/COLOR HARASSMENT: HOSTILE WORK ENVIRONMENT
(SECTION 1981)

59. Noriega incorporates all other paragraphs as though fully set forth herein.

60. During Noriega's employment with Marillac, she was subjected to unwelcome race and color harassment, including but not limited to, offensive racially charged conduct and other suspicious conduct which creates inferences of further unlawful racially charged conduct by Marillac. This includes, but is not limited to, her supervisors refusing to communicate with her and instead communicating only with her white co-worker.

61. Noriega's race and color were each motivating factors in Noriega being subjected to said racial and color harassment and Noriega being put in a disadvantageous position because of the same.

62. The unwelcomed harassment affected a term, condition, or privilege of Noriega's employment in that it was sufficiently severe or pervasive to alter the conditions of Noriega's employment and create an abusive, intimidating and hostile working environment.

63. This resulted in Noriega enduring pain and suffering, loss of enjoyment of life and mental anguish along with the other harms and losses stated herein. This also would have detrimentally affected a reasonable person of the same race and color as Noriega in Noriega's position.

64. Marillac had actual and constructive notice of said harassing conduct.

65. Further, Marillac failed to (i) prevent, (ii) promptly and properly investigate and (iii) promptly take corrective action to stop certain unlawful conduct. Even further, Marillac restrained and interfered with Noriega's associated rights.

66. Marillac is thereby jointly liable to Noriega.

67. As a direct and proximate result of the conduct of Marillac (including its agents), Noriega has suffered, and is entitled to full compensation from the defendants for, severe economic and non-pecuniary damages, including but not limited to, loss of past and future wages, promotions, opportunities of promotions and advancement, fringe benefits, as well as emotional distress, along with the costs incurred in enforcing Noriega's rights including, but not limited to, attorney fees, expert fees and court costs. Noriega felt, and continues to feel, pain and suffering, loss of enjoyment of life and mental anguish. Noriega's harms and losses are of a non-medical condition nature (i.e., garden variety).

68. The conduct of Marillac (including its agents) was outrageous and showed an evil motive or reckless indifference or conscious disregard for the rights of Noriega thereby the imposition of punitive damages against Marillac is warranted to punish Marillac and deter Marillac and others from like conduct.

COUNT V
RACE AND COLOR: TANGIBLE EMPLOYMENT ACTION
(SECTION 1981)

69. Noriega incorporates all other paragraphs as though set forth fully herein.

70. Noriega satisfactorily performed Noriega's job with Marillac.

71. On information and belief, and when relevant, Noriega's race and color were each a motivating factor in Noriega being: (1) terminated, (2) treated less favorably in her work conditions including, but not limited to, tasks and pay, compared to those not in the same protected classes who were similarly situated, (3) disciplined while those similarly situated of other protected classes were not so disciplined and (4) other negative tangible employment actions by Marillac.

72. Marillac had actual and constructive notice of said unlawful conduct.

73. Further, Marillac failed to (i) prevent, (ii) promptly and properly investigate and (iii) promptly take corrective action to stop certain unlawful conduct. Even further, Marillac restrained and interfered with Noriega's associated rights.

74. Marillac is thereby jointly liable to Noriega.

75. As a direct and proximate result of the conduct of Marillac (including its agents), Noriega has suffered, and is entitled to full compensation from the defendants for, severe economic and non-pecuniary damages, including but not limited to, loss of past and future wages, promotions, opportunities of promotions and advancement, fringe benefits, as well as emotional distress, along with the costs incurred in enforcing Noriega's rights including, but not limited to, attorney fees, expert fees and court costs. Noriega felt, and continues to feel, pain and suffering, loss of enjoyment of life and mental anguish. Noriega's harms and losses are of a non-medical condition nature (i.e., garden variety).

76. The conduct of Marillac (including its agents) was outrageous and showed an evil motive or reckless indifference or conscious disregard for the rights of Noriega

thereby the imposition of punitive damages against Marillac are warranted to punish Marillac and deter Marillac and others from like conduct.

COUNT VI
Retaliation in Violation of The PHEW Law
(C.R.S. § 8-14.4-102(1), (4))

77. Noriega incorporates by reference all allegations contained in the above paragraphs as though set forth separately herein.

78. At all times relevant to this Complaint, Defendant was a “principal” covered by the PHEW Law. C.R.S. § 8-14.4-101(3).

79. At all times relevant to this Complaint, Noriega was a “worker” covered by the PHEW Law. C.R.S. § 8-14.4-101(5).

80. Under C.R.S. § 8-14.4-102:

(1) A principal shall not discriminate, take adverse action, or retaliate against any worker based on the worker, in good faith, raising any reasonable concern about workplace violations of government health or safety rules, or about an otherwise significant workplace threat to health or safety, related to a public health emergency to the principal, the principal’s agent, other workers, a government agency, or the public if the principal controls the workplace conditions giving rise to the threat or violation.

...

(4) A principal shall not discriminate, take adverse action, or retaliate against a worker based on the worker opposing any practice the worker reasonably believes is unlawful under this article 14.4 or for making a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing as to any matter the worker reasonably believes to be unlawful under this article 14.4.

81. Noriega engaged in protected activity under the PHEW Law when she raised good faith, reasonable concerns about the Defendant's failure to abide by the orders of the CDC and the state and local governments pandemic-related policies regarding social distancing of workers.

82. Noriega also reasonably believed that Defendant's actions were a threat to the health and safety of herself, her coworkers, the SBHC patients, and the members of the public during the pandemic.

83. Defendant violated the PHEW Law by terminating Noriega's employment because she engaged in activities and communications that were protected under the law, C.R.S. § 8-14.4-102(1), (4).

84. Defendant is therefore liable to Noriega for back pay, front pay, compensatory damages, and reasonable attorney's fees. C.R.S. § 8-14.4-106. Noriega puts Defendant on notice that she plans to seek punitive damages when the rules so allow.

COUNT VII
Retaliation in Violation of Private Enterprise Employee Protection Act
(C.R.S. § 24-114-102)

85. Noriega incorporates by reference all allegations contained in the above paragraphs as though set forth separately herein.

86. At all times relevant to this Complaint, Defendant was a "Private enterprise under contract with a state agency" covered by Private Enterprise Employee Protection. C.R.S. § 24-114-101(4).

87. At all times relevant to this Complaint, Noriega was an “employee” covered by Private Enterprise Employee Protection. C.R.S. § 24-114-101(4).

88. Under C.R.S. § 24-114-102(1):

(1) Except as provided in subsection (2) of this section, no appointing authority or supervisor of a private enterprise under contract with a state agency shall initiate or administer any disciplinary action against any employee on account of the employee’s disclosure of information concerning said private enterprise.

89. Noriega engaged in protected activity covered by Private Enterprise Employee Protection when she raised good faith, reasonable concerns about the Defendant’s mishandling of government funds that were meant for the SBHC clinic.

90. When Noriega reported the mishandling of government funds to Lata (Kay) Ramachandran, CEO of Marillac, Ms. Ramachandran responded by stating she can do what she wanted.

91. When Noriega attempted to report the mishandling of government funds to Marillac’s Board Chair, Joanna Little, Ms. Little refused to take her report.

92. Defendant violated the by Private Enterprise Employee Protection by terminating Noriega’s employment because she engaged in activities and communications that were protected under the law, C.R.S. § 24-114-102.

93. Defendant is therefore liable to Noriega for damages, together with court costs, and other relief deemed appropriate by the court. C.R.S. § 8-114-103.

PRAYER FOR RELIEF

94. As a direct and proximate result of the conduct of Defendant Noriega has suffered, and is entitled to full compensation from Defendant for, severe non-pecuniary damages, including but not limited to, deprivation of civil rights and other rights under Title VII, opportunities of promotions and advancement, nominal damages, as well as emotional distress, along with the costs incurred in enforcing Noriega's rights including, but not limited to, attorney fees, expert fees and court costs. Pain and suffering, loss of enjoyment of life and mental anguish (garden variety, not medical) were incurred by Noriega.

95. Further, as a direct and proximate result of the conduct of Defendant Marillac, Noriega has suffered, and is entitled to full compensation from Marillac for, severe non-pecuniary damages, including but not limited to, deprivation of civil rights and other rights under Section 1981, opportunities of promotions and advancement, nominal damages, as well as emotional distress, along with the costs incurred in enforcing Noriega's rights. Pain and suffering, loss of enjoyment of life and mental anguish (garden variety, not medical) were incurred by Noriega.

96. The conduct of Defendant Marillac has been outrageous and showed an evil motive or reckless indifference or conscious disregard for the rights of Noriega thereby the imposition of punitive damages against them is warranted to punish each of them and deter each of them and others from like conduct.

WHEREFORE, Noriega respectfully requests that this Court enter judgment against Defendant Marillac on all counts and award Noriega all relief available to her, including but not limited to:

- a. Back pay, including wages and benefits,
- b. Front pay,
- c. Future lost earnings,
- d. Compensatory, nominal, and punitive damages in an amount to be determined by the jury and that is fair and reasonable;
- e. Pre-judgment and post-judgment interest;
- f. Costs of suit, including reasonable attorney fees and expert fees, and nominal damages, along with all other damages permitted by law, and
- g. All other relief that this Court deems just, equitable, and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff, Ana Noriega, respectfully requests a jury trial on all claims stated herein.

RESPECTFULLY SUBMITTED this 28th day of February 2023.

ROBINSON & HENRY, P.C.

By: /s/ Joseph P. Sanchez
Joseph P. Sanchez, Esq.
Eric J. Neeper, Esq.
ROBINSON & HENRY, P.C.
1805 Shea Center Drive, Suite 180
Highlands Ranch, CO 80129
P: (303) 688-0944
joseph.sanchez@robinsonandhenry.com
eric@robinsonandhenry.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this, 28th day of February 2023, I electronically filed the foregoing with the Clerk of the Court using the PACER or CM/ECF system which will send notification of such filing to all parties of record.

Jeffrey H. McClelland
Todd Arthur Fredrickson
Fisher & Phillips LLP
1125 17th Street
Suite 2400
Denver, CO 80202
303-218-3674
Fax: 303-218-3651
Email: jmcclelland@fisherphillips.com
Email: tfredrickson@laborlawyers.com
Attorneys for Defendant Marillac Clinic, Inc.

ROBINSON & HENRY, P.C.

/s/ Joseph P. Sanchez
Joseph P. Sanchez