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LAW OFFICES OF LOUIS A. ZAYAS, L.L.C.
8901 Kennedy Boulevard, Suite 5S
North Bergen, N.J. 07047
(201) 977-2900
Counsel for Plaintiff

DR. GINA MIRANDA DIAZ,

Plaintiff,

v.

TOWN OF WEST NEW YORK,
COMMISSIONER COSMO A.
CIRILLO, Individual and Official
Capacity; COMMISSIONER
MARGARITA GUZMAN, Individual
and Official Capacity;
COMMISSIONER GABRIEL
RODRIGUEZ; Individual and Official
Capacity; TOWN OF GUTTENBERG

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

DOCKET NO.:

COMPLAINT AND JURY DEMAND

The Plaintiff Dr. Gina Miranda Diaz through her attorney, Louis A. Zayas, Esq. of the Law Offices of Louis A. Zayas, L.L.C. alleges as follows:

INTRODUCTION

1. Plaintiff brings this civil action brought under New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq; against the Defendants for unlawful retaliation based on her actual and/or perceived political affiliation.

PARTIES

2. Plaintiff Dr. Gina Miranda Diaz (“Dr. Diaz”) is a citizen of the State of New Jersey, residing in North Bergen, New Jersey.

3. Defendant Town of West New York (“West New York”) is a municipality organized by virtue of New Jersey law, and pursuant to that law, is to be known and distinguished by the name "West New York." Defendant West New York is sued to effect the full declaratory, injunctive and compensatory damages demanded by the Plaintiff.

4. Commissioner Cosmo A. Cirillo (“Commissioner Cirillo”) is a town commissioner with the Town of West New York. Commissioner Cirillo is also the Business Administrator for the Town of Guttenberg. Commissioner Cirillo is sued in his official and individual capacity as an government official for both West New York and Guttenberg for the purposes of effecting the compensatory and punitive damages demanded by the Plaintiff.

5. Commissioner Margarita Guzman (“Commissioner Guzman”) is a town commissioner with the Town of West New York. Commissioner Guzman is sued in her official and individual capacity for the purposes of effecting the compensatory and punitive damages demanded by the Plaintiff.

6. Commissioner Gabriel Rodriguez (“Commissioner Rodriguez”) or is a town commissioner with the Town of West New York. Commissioner Guzman is sued in her official and individual capacity for the purposes of effecting the compensatory and punitive damages demanded by the Plaintiff.

7. Defendant Town of Guttenberg (“Guttenberg”) is a municipality organized by virtue of New Jersey law, and pursuant to that law, is to be known and distinguished by the name "Guttenberg.” Defendant Guttenberg is sued to affect the full declaratory, injunctive and compensatory damages demanded by the Plaintiff.

FACTS

8. The Town of West New York is a Commission Form of government, commonly referred as a “Walsh Act municipality”. Pursuant to N.J.S.A. 40:72-2, the Walsh Act, all powers vested in board of commissioners:

The board of commissioners established hereunder shall have all the executive, administrative, judicial and legislative powers and duties heretofore had and exercised by the mayor and council and all other executive or legislative bodies in such municipality and shall have complete control over the affairs of such municipality.

9. Under the Commission Form of Government, the executive function of the municipality is divided among the five commissioners, each of whom heads one of the municipal departments specified in the law. Subordinate offices and agencies are assigned among the departments by the full board at its organization meeting.

10. One commissioner is chosen to serve as mayor and to preside over meetings of the board for a four-year term. The mayor is directed by law to “supervise” all departments, but there is no veto power, and judicial decisions have tended to regard each commissioner as supreme in his or her own department, so that the mayor's supervisory authority depends more upon personal qualities than on statutory authority.

11. Each commissioner has the power of appointment for all of the personnel in his or her department.

12. Every municipality is required by state law to employ a Health Officer. The Health Officer position is a non-political position required by state law. The Health Officer is responsible for overseeing the health-related issues in a community.

13. The Health Officer position is a non-political position as well as a statutory one. The Health Officer position is required to oversee the health-related issues in a community, including but not limited to the following essential functions:

- a. monitor health status to identify community health problems;*
- b. diagnose and investigate health problems and health hazards in the community;*
- c. inform, educate, and empower people about health issues;*
- d. mobilize community partnerships to identify and solve health problems;*
- e. develop policies and plans that support individual and community health efforts;*
- f. enforce laws and regulations that protect health and ensure safety;*
- g. link people to needed personal health services and assure the provision of health care when otherwise unavailable;*
- h. assure a competent public health and personal health care workforce;*
- e. evaluate effectiveness, accessibility and quality of personal and population-based health services.*

14. Generally, the New Jersey Constitution and United States Constitution prohibit retaliatory employment practices based on a person's political affiliation or belief. The West New York's employee handbooks, which covers Dr. Diaz' employment, explicitly prohibits retaliation based on an employee's political activities and/or political affiliations.

15. In October 2015, West New York hired Dr. Diaz as its Health Officer. At all relevant times, Dr. Diaz' political affiliation, political beliefs and expression of free speech were not a requirement of her employment with West New York and Guttenberg.

16. Historically, West New York has not entered into any shared services for Health Officer with another municipality. Given its large urban population and high concentration of local businesses. As a large town, West New York required a dedicated Health Officer to oversee the health issues of the community.

17. As part of a shared services agreement with Guttenberg, Dr. Diaz also performed her duties Health Officer for that town.

18. Throughout her employment with West New York and Guttenberg, Dr. Diaz performed her duties and responsibilities in an exemplary manner.

19. Prior to February 2018, the Sacco Commissioners never raised any concerns about any expenses associated with having a Health Officer or cost-savings associated with shared services for the Town of Guttenberg.

20. As Health Officer, Dr. Diaz was occupied with a wide variety of health issues in town that required more, not less, manpower to properly serve the community and preserve public safety and welfare.

21. In February 2018, Amy DeGise sought to run for Hudson County Executive. Mayor Roque along with his political allies joined forces to oppose her.

22. In opposition to Mayor Roque, North Bergen Mayor Sacco and his political allies organized to support Amy DeGise.

23. As a result of the above political warfare in Hudson County, the three West New York Commissioners broke rank with Mayor Roque and joined political forces with Mayor Sacco. Commissioners Margarita Guzman, Cosmo Cirillo, and Gabriel Rodriguez (hereinafter “the Sacco Commissioners”) formed a majority to advance their political agenda to help elect Amy DeGise and oppose Mayor Roque’s political agenda.

Given their majority, the Sacco Commissioners took control over the government, rendering Mayor Roque and Commissioner Susan Colacurcio to a minority role in government.

24. Upon taking control of the Town Hall, the Sacco Commissioners conspired with each other to target those employees who are or perceived to be Mayor Roque political supporters to consolidate their power.

25. After taking control of government, the Sacco Commissioners removed Commissioner Colacurcio from the Department of Revenue and Finance and replaced her with Commissioner Rodriguez, who assumed oversight responsibility of the Health Department, including Health Officer Dr. Gina Miranda Dr. Diaz. Commissioner Rodriguez with the corrupt agreement of Commissioners Cirillo and Guzman, ordered the town's law firm to prepare a report to recommend cost saving measures.

26. Despite numerous other wasteful government expenditures, such as an engineering contract with a politically connected Mayor Sacco supporter, the real purpose of the aforementioned report was to target one person for termination: Health Officer Dr. Diaz. The Sacco Commissioners targeted Dr. Diaz because of her political affiliation with Mayor Roque and non-political support of Mayor Sacco.

27. Under the pretense of conducting a "cost-saving" review the Sacco Commissioner sought to terminate Dr. Diaz as the town's Health Officer. The "Sacco Commissioners" enacted a resolution terminating Dr. Diaz' position as Health Officer and entering into a shared services agreement with the Town of North Bergen. Under the shared services agreement, the "Sacco Commissioners" threatened Dr. Diaz' employment

by appointing a North Bergen Health Officer, who is also a Mayor Sacco political supporter.

27. The shared services agreement essentially replaces Dr. Diaz with a less qualified person whose only apparent qualification for the position is that she is a political supporter of Mayor Sacco.

28. Moreover, the shared services agreement deprives the residents of West New York of a full-time Health Officer and thereby reducing public safety.

29. The Sacco Commissioners excuse to terminate Dr. Diaz' employment as a cost-saving measure is mere pretext to conceal their retaliatory intent to punish Dr. Diaz because of her political affiliation. For example, West New York has a number of expenditures that are excessive and unnecessary but the "Sacco Commissioners" refuse to consider eliminating they are motivated by retaliatory *animus*, not cost-savings concerns.

30. On May 17, 2018, the Sacco Commissioners voted to authorize the termination of Dr. Diaz as Health Officer and replace her with a Mayor Sacco political supporter.

31. In June 2018, Dr. Diaz who also works as the Health Officer for the Town of Guttenberg under a shared-services agreement was advised that her services as Health Officer for the Town of Guttenberg was no longer required without any explanation.

32. The Guttenberg Business Administrator who recommended terminating Dr. Diaz' employment was Commissioner Cirillo, who did so because of her political affiliation. The Town of Guttenberg is politically affiliated with Mayor Sacco against Mayor Roque in its political efforts to elect Amy DeGise to Hudson County Executive.

33. Guttenberg's decision to terminate Dr. Diaz' employment as Health Officer was based on her political affiliation.

I.
COUNT ONE
New Jersey Civil Rights Act
Political Retaliation
West New York Defendants

34 All of the allegations in each of the foregoing paragraphs are incorporated by reference as if fully set forth herein.

35 Defendants, acting under color of law, subjected the Plaintiff to the deprivation of her constitutional right to freedom of association in violation of the New Jersey Constitution.

36 Plaintiff was unlawfully retaliated against by the Defendants because of her political affiliation with Mayor Roque and/or lack of political supporter for Mayor Sacco.

37 Plaintiff's constitutionally protected activities, as alleged herein, were the motivating factor for Defendants' retaliatory conduct, including such unlawful employment practices as threatening her employment.

38 Defendants intentionally, willfully and recklessly retaliated against Plaintiff as alleged herein. Defendants who may not have actively participated in the civil rights deprivations as alleged above are liable for failing to prevent them.

39 The foregoing civil rights violations were undertaken by Defendants' agents, officials, and employees and/or other individuals acting on behalf of the Defendants, who in turn, knowingly ratified such civil rights violations.

40 As a direct and proximate cause of the aforementioned, Plaintiff has suffered and will continue to suffer economic, emotional, and psychological damages in an amount to be determined by a jury. Because of Defendants' willful and malicious conduct, Plaintiffs seek punitive damages in their individual capacity in an amount to be determined by a jury.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, for the following relief:

- a. Compensatory damages;
- b. Punitive damages;
- c. Reinstatement;
- d. Attorney's fee and costs of suit;
- e. Such other and further relief that the Court deems equitable and just.

II.
COUNT TWO
NEW JERSEY CIVIL RIGHTS ACT
N.J.S.A. 10:6-2
Guttenberg Defendants

41 All of the allegations in each of the foregoing paragraphs are incorporated by reference as if fully set forth herein.

42 Defendant Cirillo and Guttenberg, acting under color of law, subjected the Plaintiff to the deprivation of her constitutional right to freedom of political affiliation in violation of the New Jersey Constitution, as alleged herein.

43 Plaintiff's constitutionally protected activities, i.e., political affiliation with Mayor Roque and non-political support of Mayor Sacco, were the motivating factor

for Defendants' retaliatory conduct of threatening and terminating her employment with Guttenberg.

44 Defendants intentionally, willfully and recklessly retaliated against Plaintiffs as alleged herein. Defendants who may not have actively participated in the civil rights deprivations as alleged above are liable for failing to prevent them.

45 The foregoing civil rights violations were undertaken by Defendants' agents, officials, employees and/or other individuals acting on behalf of the Defendants, who in turn, knowingly ratified such civil rights violations.

46 As a direct and proximate cause of the aforementioned, Plaintiff has suffered and will continue to suffer economic, emotional, and psychological damages in an amount to be determined by a jury. Because of Defendants' willful and malicious conduct, Plaintiff seeks punitive damages in their individual capacity in an amount to be determined by a jury.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, for the following relief:

- a. Compensatory damages;
- b. Punitive damages against the individual Defendants
- c. Attorney's fee and costs of suit;
- d. Such other and further relief that the Court deems equitable and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial jury as to all issues.

DATED: June 18, 2018

/s/Louis A. Zayas Esq.

LOUIS A. ZAYAS, ESQ.

DESIGNATION OF TRIAL COUNSEL

LOUIS A. ZAYAS, ESQ., is designated as trial counsel in this matter.

DATED: June 18, 2018

/s/Louis A. Zayas Esq.

LOUIS A. ZAYAS, ESQ.

DEMAND FOR PRODUCTION OF INSURANCE AGREEMENTS

Pursuant to R. 4:10-2(b), demand is hereby made that you disclose to the undersigned whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy all or part of a judgment which may be entered in the action or to indemnify or reimburse for payment made to satisfy the judgment. If so, please attach a copy of each, or alternative state, under oath and certification: (a) policy number; (b) name and address of insurer; (c) inception and expiration date; (d) names and addresses of all persons insured thereunder; (e) personal injury limits; (f) property damages limits; and (g) medical payment limits.

DATED: June 18, 2018

/s/Louis A. Zayas Esq.

LOUIS A. ZAYAS, ESQ.

Civil Case Information Statement

Case Details: HUDSON | Civil Part Docket# L-002393-18

Case Caption: DIAZ GINA VS TOWN OF WEST NEW YORK
K

Case Initiation Date: 06/18/2018

Attorney Name: LOUIS ALEXANDER ZAYAS

Firm Name: LOUIS A. ZAYAS, LLC

Address: 8901 KENNEDY BLVD STE 5S

NORTH BERGEN NJ 07047

Phone:

Name of Party: PLAINTIFF : Diaz, Gina, M

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: CIVIL RIGHTS

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? YES

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

06/18/2018

Dated

/s/ LOUIS ALEXANDER ZAYAS

Signed