

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHELLE CHIANCONE

PLAINTIFF,

v.

**BAYADA HOME HEALTH CARE,
INC.,**

DEFENDANT.

CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

COMPLAINT AND JURY DEMAND

Plaintiff Michelle Chiancone, by and through her attorneys, Bell & Bell, LLP, hereby files the following Complaint and Jury Demand (“Complaint”).

PRELIMINARY STATEMENT

1. This is an action for an award of damages, punitive damages, attorneys’ fees and other relief on behalf of Michelle Chiancone, a former employee of BAYADA Home Health Care, Inc. Ms. Chiancone was wrongfully terminated and retaliated against for reporting serious compliance concerns including waste and wrongdoing and for refusing to engage in what she believed to be illegal, unsafe and/or unethical activities by Bayada.
2. This action is brought pursuant to the Pennsylvania Whistleblower Law, 43 Pa.C.S. § 1421, et seq. and the common law of the Commonwealth of Pennsylvania.

JURISDICTIONAL STATEMENT

3. This Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332.
4. The amount in controversy in this matter exceeds the jurisdictional minimum exclusive of interest and costs.

5. The Parties hereto are citizens and/or residents of different states.
6. Plaintiff Michelle Chiancone is a citizen and resident of Claymont, Delaware.
7. Defendant BAYADA Home Health Care, Inc. (“Bayada” or the “Company”) is a Pennsylvania corporation with several locations in Pennsylvania, including the location at 1400 N. Providence Road, Suite 200, Media, Pennsylvania 19063, where Ms. Chiancone was employed.
8. Defendant’s principal place of business is, upon information and belief, in New Jersey.
9. This Court has supplemental jurisdiction over Pennsylvania state law claims pursuant to 28 U.S.C. § 1367.
10. This Honorable Court has personal jurisdiction over Defendant.

PARTIES & VENUE

11. This action properly lies in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b).
12. This action properly lies in the Eastern District of Pennsylvania because the claim arose in this judicial district and significant activities associated with the claim occurred in this district.
13. Plaintiff Michelle Chiancone is an adult female citizen and resident of Claymont, Delaware.
14. Defendant Bayada is a registered domestic corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, with a business address of 1400 N. Providence Road, Suite 200, Media, Pennsylvania 19063, where Ms. Chiancone was employed.

15. This cause of action arose out of transactions or occurrences that took place in whole or in part in Delaware County, Pennsylvania.
16. Bayada regularly conducts business within Delaware County.
17. Most, if not all, of the acts referred to in this Complaint occurred in Delaware County.
18. Upon information and belief, Defendant Bayada receives funding from the government, and is a public body as defined by the Pennsylvania Whistleblower Law, 43 Pa.C.S. § 1421, et seq. (“PWL”), or is otherwise an employer covered by the PWL.
19. With respect to the PWL claims alleged herein, at all times relevant hereto, Plaintiff was an “employee” of Defendant within the meaning of the PWL and is entitled to the protections of the PWL.
20. With respect to the PWL claims alleged herein, at all times relevant hereto, Defendant acted as Plaintiff’s “employer” within the meaning of the PWL and is accordingly subject to the provisions of the PWL.
21. Upon information and belief, Defendant receives government funding from the Commonwealth of Pennsylvania and is accordingly subject to the PWL.
22. Defendant is a recipient of government funds and a “public body” for purposes of the Whistleblower Law.
23. At all times material hereto, Defendant Bayada acted through its agents and servants, acting within the course and scope of their employment with Bayada and in furtherance of Bayada’s business.

FACTS

24. Plaintiff Michelle Chiancone began her employment with Bayada on or about March 29, 2019 as a Nurse.

25. Bayada provides hospice services and palliative care, including at its location in Media, Pennsylvania, where Ms. Chiancone was employed.
26. Ms. Chiancone was a loyal employee of Bayada who maintained excellent relationships with the clients that she served.
27. During her employment, Ms. Chiancone carried out her duties in accordance with the highest ethical standards and best practices and performed her job in a dedicated and exemplary manner.
28. During Ms. Chiancone's employment at Bayada, the novel Coronavirus became a pandemic.
29. Ms. Chiancone observed practices at Bayada that she believed to be illegal and out of compliance with regard to the health, safety and public welfare, including, among other things, Bayada's failure to take necessary precautions to protect its patients, and family members of patients from the spread of the highly contagious Coronavirus.
30. Ms. Chiancone is sixty (60) years old.
31. Information available at the time of Ms. Chiancone's employment indicated that, based upon her age, Ms. Chiancone was at increased risk of serious illness and/or death if she contracted the Coronavirus.
32. Many Bayada patients and their family members were also at increased risk of serious illness if they contracted the Coronavirus from Bayada employees.
33. Despite this increased danger, Ms. Chiancone observed that the Bayada office and supply closets were locked, and employees were given only three (3) masks (not N95 masks), gloves and hand sanitizer.
34. Bayada employees were instructed to only wear the provided masks when treating certain

patients, despite the fact that all houses that they visited may have posed a risk of exposure to the Coronavirus between the employees, the patients and patients' family members.

35. Bayada further refused to provide N95 masks to their employees until one of its employees was exposed to and tested positive for the Coronavirus, after being directed to treat a patient whose wife informed Bayada that she was very sick and who ultimately did test positive for the Coronavirus herself.
36. After Bayada learned that the patient's wife had tested positive for the Coronavirus, thereby learning that the treating employee had been exposed to the Coronavirus, Bayada sent out an email instructing the nursing staff not to alert their patients or the family members of patients that a staff member had been exposed to the Coronavirus.
37. Ms. Chiancone believed this directive was unlawful, unethical and/or against Pennsylvania public policy, as it created a serious risk of exposing other Bayada staff members, Bayada patients and the patients' families to the Coronavirus.
38. Ms. Chiancone also observed that Bayada improperly and inadequately responded to the pandemic.
39. As a result of Bayada's inadequate and improper response to the pandemic, Bayada's wrongful directive, and her discomfort with being asked to engage in such unlawful and/or unethical activity, Ms. Chiancone complained about the inappropriate conduct she had been asked to engage in, and further informed her superior, Christopher Fein, Bayada Division Director, that she was uncomfortable treating patients who had been exposed to the Coronavirus, due to the fact that Bayada was not providing proper personal protective equipment and asking employees to only use personal protective equipment with respect to certain patients.

40. This report to Mr. Fein constituted a good faith report to Ms. Chiancone's employer regarding an instance of waste or wrongdoing on the part of the Company, violation of a statute or regulation, or of a code of conduct or ethics designed to protect the interest of the public.
41. Despite her discomfort with treating patients who had been exposed to the Coronavirus, due to the Company's refusal to provide appropriate personal protective equipment, Ms. Chiancone made clear to Mr. Fein that she was comfortable continuing to treat patients who had not been exposed, and would continue to treat such patients.
42. Mr. Fein informed Ms. Chiancone that she did not have a choice regarding which patients she would treat, regardless of the fact that she did not have proper protective equipment, and that if she refused to see exposed patients, she would have to use her paid time off to do so.
43. Ms. Chiancone felt that she had no choice but to use such days, rather than expose herself to the deadly virus without proper protective equipment and risk exposing other patients and their families.
44. On April 3, 2020, Ms. Chiancone became ill, and, upon the advice of her physician, began a period of self-quarantine.
45. Ms. Chiancone called out sick from April 3, 2020 through April 5, 2020.
46. Ms. Chiancone's regularly scheduled week off began on April 6, 2020.
47. On April 7, 2020, Mr. Fein called Ms. Chiancone and informed her that her employment with Bayada had been terminated.
48. Mr. Fein informed Ms. Chiancone that she was being terminated for various reasons, none of which were legitimate.

49. First, Mr. Fein stated that Ms. Chiancone had “refused to see patients,” which was untrue.

50. Ms. Chiancone had never refused to see patients.

51. Rather, Ms. Chiancone had indicated her discomfort with treating patients who had been exposed to Coronavirus until such time as Bayada provided proper protective equipment to its employees.

52. Moreover, as she had been specifically instructed to do by Mr. Fein, Ms. Chiancone used her sick time to call off of work to protect herself from exposure to the Coronavirus.

53. Mr. Fein also claimed that patients had complained about Ms. Chiancone.

54. This claim was also untrue, as, during her employment with Bayada, Ms. Chiancone had a nearly unblemished employment record and had been alerted to only one minor complaint that was resolved on the same day the complaint was made.

55. Lastly, Mr. Fein made the outrageous accusation that Ms. Chiancone had tried to get someone to falsify a patient death certificate, which was also untrue.

56. The reasons given by Mr. Fein as grounds for Ms. Chiancone’s termination were thus all inaccurate.

57. The alleged grounds for Ms. Chiancone’s termination were fabricated in an attempt to make it appear as though Bayada had legitimate grounds upon which to terminate Ms. Chiancone.

58. In fact, Bayada had no legitimate reason to terminate Ms. Chiancone.

59. The real reason for Ms. Chiancone’s termination was retaliation for her reporting her concerns to Mr. Fein, and for refusing to engage in what she perceived to be unsafe, unethical and/or illegal activities by Bayada.

60. The activities Mr. Chiancone observed and/or refused to engage in constituted violations

of, among other laws, CMS regulations and guidance, the Occupational Safety and Health Act, Section 308(a) of the MCARE Act, 40 P.S. § 1303.308 (Reporting and Notification), 18 U.S. Code § 1001 (Fraud and False Statements), 18 U.S. Code § 1035 (False Statements relating to Health Care Matters), Chapter 28, Title 27 of the Pennsylvania Code (Communicable and Noncommunicable Diseases), federal terrorism laws, and violations of Pennsylvania common law, including, among other things, tortious negligence, fraud and/or intentional misrepresentation.

61. Defendant's termination of Mr. Chiancone is suspicious given its extremely close proximity in time to her reporting her concerns and her refusal to engage in illegal conduct.
62. Defendant's termination of Mr. Chiancone is further suspicious given that Ms. Chiancone was amply qualified for her position, had been performing excellently, had never received any criticisms, negative reviews, disciplinary notices or been placed on any performance improvement plans, and the alleged grounds for her termination were false.
63. Ms. Chiancone has suffered significant financial losses, including lost wages, as a direct and proximate result of the actions and inactions of the Defendant.
64. As a result of the Defendant's conduct described herein, Ms. Chiancone has incurred a significant obligation for attorneys' fees and costs of bringing this action.
65. As a result of Defendant's conduct described herein, Ms. Chiancone has suffered and continues to suffer significant emotional distress.
66. Defendant and its agents acted with knowledge of, or in reckless disregard of the probability that their actions and inactions would cause Ms. Chiancone to suffer emotional distress.

67. Defendant's actions were intentional and willful and warrant the imposition of punitive damages.

COUNT I
Wrongful Termination

68. Plaintiff Michelle Chiancone repeats and incorporates by reference the allegations of all previous paragraphs as if fully set forth at length herein.

69. Ms. Chiancone opposed and refused to participate in unethical, illegal and/or unsafe activity engaged by Defendant Bayada, as alleged herein.

70. The activities Ms. Chiancone observed and/or refused to engage in constituted violations of, among other laws, CMS regulations and guidance, the Occupational Safety and Health Act, Section 308(a) of the MCARE Act, 40 P.S. § 1303.308 (Reporting and Notification), 18 U.S. Code § 1001 (Fraud and False Statements), 18 U.S. Code § 1035 (False Statements relating to Health Care Matters), Chapter 28, Title 27 of the Pennsylvania Code (Communicable and Noncommunicable Diseases), federal terrorism laws, and violations of Pennsylvania common law, including, among other things, negligence, fraud and/or intentional misrepresentation.

71. Defendant Bayada terminated Ms. Chiancone in retaliation for her opposition to and refusal to engage in unethical, fraudulent and/or illegal activity in violation of Pennsylvania public policy.

72. The above-described conduct of Defendant, in terminating Ms. Chiancone, represents wrongful termination pursuant to the common law of the Commonwealth of Pennsylvania.

73. As the direct and proximate result of Defendant's wrongful termination of Ms. Chiancone, Plaintiff has sustained a loss of earnings, severe emotional and psychological distress, loss of self-esteem, damage to her professional reputation and career, loss of future earning

power, as well as back pay, front pay, and interest due thereon, and has incurred attorneys' fees and costs.

COUNT II
Pennsylvania Whistleblower Law, 43 Pa.C.S. § 1421, et seq.

74. Plaintiff Michelle Chiancone repeats and incorporates by reference the allegations of all previous paragraphs as if fully set forth at length herein.
75. Ms. Chiancone became aware of numerous wrongdoings being committed by Bayada as alleged herein, including, but not limited to, Defendant's inappropriate, inadequate and improper response to the Coronavirus pandemic; Defendant's failure to protect the health and safety of its patients and its patients' family members; Defendant's acts to potentially spread the extremely contagious and potentially deadly Coronavirus; and Defendant's wrongful directive to its employees not to inform patients of their potential exposure to the Coronavirus.
76. Ms. Chiancone made good-faith reports to her supervisor, Mr. Fein, regarding her concerns.
77. In retaliation for her reports, Defendant Bayada terminated Ms. Chiancone, in violation of the Pennsylvania Whistleblower Law.
78. As the direct and proximate result of Defendant's violation of the Pennsylvania Whistleblower Law, Plaintiff Michelle Chiancone has sustained loss of earnings, severe emotional and psychological distress, loss of self-esteem, damage to her professional reputation and career, loss of future earning power, as well as back pay, front pay, and interest due thereon, and has incurred attorneys' fees and costs.

PRAYER FOR RELIEF

79. Plaintiff Michelle Chiancone repeats and incorporates by reference the allegations of all previous paragraphs as if fully set forth at length herein.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendant, and Order:

- a. Appropriate equitable relief;
- b. Defendant to compensate Plaintiff with a rate of pay and other benefits and emoluments of employment to which she would have been entitled had she not been subjected to unlawful retaliation;
- c. Defendant to compensate Plaintiff with the wages and other benefits and emoluments of employment lost due to Defendant's unlawful conduct;
- d. Defendant to pay Plaintiff punitive damages;
- e. Defendant to pay Plaintiff compensatory damages for future pecuniary losses, pain and suffering, inconvenience, mental anguish, loss of employment and other nonpecuniary losses as allowable;
- f. Defendant to pay Plaintiff's costs of bringing this action, including, but not limited to, Plaintiff's attorneys' fees;
- g. Plaintiff be granted any and all other remedies available; and
- h. Such other and further relief as is deemed just and proper.

JURY DEMAND

Plaintiff Michelle Chiancone hereby demands trial by jury as to all issues so triable.

By: /s/ Christopher A. Macey, Jr.

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Dated: October 1, 2020