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Attorneys for Charging Party

BEFORE THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY
HUMAN RIGHTS BUREAU

AMBER ROANE,)	
)	
Charging Party,)	
vs.)	
)	
MONTANA PROFESSIONAL)	COMPLAINT FOR
ASSISTANCE PROGRAM,)	DISCRIMINATION AND
)	RETALIATION
Respondent.)	

The undersigned, Amber Roane, states as follows:

Parties

1. Amber Roane (“Roane”) was employed by Montana Professional Assistance Program (“MPAP”) from June 2019 until February 2, 2021.
2. MPAP is a nonprofit corporation with its office is located at 3333 2nd Ave. N., Suite 100, Billings, Montana, 50101, phone number (406) 245-4300.

Background and Job Duties

3. MPAP currently contracts with the Montana Department of Labor and Industry to administer assistance programs for Montana’s Boards of Dentistry, Medical Examiners, Pharmacy, and Nursing. The purpose is to assist and rehabilitate licensees regulated by these boards. MPAP receives information concerning the possible impairment from drug or alcohol abuse or addiction, mental illness,

unprofessional, disruptive or harmful behavior or chronic physical illness of a professional licensed by these boards.

4. When Clinical Directors Cecilia Zinnikas (“Zinnikas”) and Meghan McGauley (“McGauley”), who are women, joined MPAP in 2018 and 2017, respectively, its Clinical Director, Michael Ramirez (“Ramirez”), who is male, stated to each of them that she would eventually take over his position as Clinical Director upon his upcoming retirement. It is now known that Ramirez has a history of dangling this position in front of female employees to entice them to employment. It is known that he told this to Zinnikas, McGauley, and at least approximately two other women previously employed by MPAP prior to Zinnikas and McGauley.
5. At all times during her employment, Roane was working as an Administrative Assistant. According to her job description, Roane reported to Ramirez. Her duties included general administrative support in the governance and operation of the organization. She assisted the Clinical Coordinators, Clinical Director, and Medical Director, including the maintenance of records, coordination of meetings schedule, preparation of agendas, and preparation of meeting minutes. She organized and maintained office administrative and clinical files, served as computer system supervisor, monitored the operation and maintenance needs of office equipment, developed and maintained office forms, functioned as the company bookkeeper, including banking activities and maintaining billing data.
6. At all relevant times, there were three employees of MPAP, all women and all working under Ramirez: Clinical Coordinators Zinnikas and McGauley and Administrative Assistant Roane.

Hiring of Male Employee

7. At the September 18, 2020, Board meeting, Zinnikas, McGauley, and Roane were all present. Ramirez introduced Mikhail Joutovsky (“Joutovsky”), who is male, to the Board and staff. He is a retired surgeon and has no education or training in counseling, addiction, or assistance programs, other than a recent brief fellowship in addiction medicine in Florida.
8. At the meeting, Ramirez stated that Joutovsky would take over MPAP in the next three to five years. He emphasized that Joutovsky would provide MPAP with a strong and well-seasoned director to take over, which in context suggested that Zinnikas and McGauley would not be strong or experienced for the position.
9. A Board member asked if Ramirez had any references for Joutovsky, and Ramirez responded, “I am his reference.”
10. A discussion ensued about a previously discussed staff retreat. Zinnikas and McGauley raised concerns about treatment of Joutovsky compared to them, the

toxicity in the office due to staff issues with Ramirez, his behavior towards them, and disparities in respective caseloads.

11. After the meeting, Ramirez talked to Joutovsky in the lobby of the Northern Hotel, which Roane overheard. Ramirez told Joutovsky that he knows women, he has many daughters and sisters, and that he stopped considering Zinnikas and McGauley for the position because they are too emotional and could not handle the political pressure of the job. Roane was disgusted by the continued conversation and got up and left.

Report of Misconduct

12. On or about September 23, 2020, McGauley, Ramirez, and Joutovsky were meeting with a female participant who had attempted to commit suicide. During the meeting, Ramirez disrespectfully criticized her not doing it correctly. He stated that what she had done was only a “cry for help.” He went on to explain to how one successfully commits suicide, rolling up his sleeves and demonstrating on his arm how to cut into the wrist vertically and not horizontally. McGauley interrupted and told Ramirez to stop, which Ramirez dismissed as McGauley being uncomfortable with suicide.
13. McGauley told Zinnikas about this interaction. Zinnikas reported it to a board member.
14. At an October 6, 2020, meeting, the three staff members and Ramirez discussed caseload disparities again. Ramirez confronted and chastised Zinnikas and McGauley for allegedly “going behind [his] back” to the Board. He suggested this was a “hostile takeover.”
15. On or about October 7, 2020, Zinnikas and McGauley also wrote letters to the Board expressing their concerns over this incident and Ramirez’s behavior toward them.
16. On October 8, 2020, Ramirez had written his staff members (Roane, Zinnikas, and McGauley) a letter, requesting that they write down any concerns they have “regarding the strain that appears to be occurring among MPAP Office Staff” and submit them directly to him. It seemed more and more clear as time went on that Roane was also being lumped in to Ramirez’s perception that Zinnikas and McGauley were attempting a “hostile takeover” of Ramirez’s position.
17. McGauley told Ramirez that she believed that physician participants, who are predominantly men, are permitted more leeway during their MPAP program participation than the nurse participants, who are predominantly women. Ramirez appeared to take personal offense to this. It was routinely perceived that men or “attractive” women participants were allowed more leeway with regard to program rules.

Ramirez Actions

18. During this relevant time period, Ramirez would often and repeatedly make inappropriate and offensive statements and comments.
19. Ramirez said a woman could not handle his position because women are too sensitive and too emotional. Women could not handle the pressure of the job and that women cause more issues. He attempted to bolster this statement by saying that he knew women, he was raised by women, he has sisters, and he has daughters, so he knows how women are.
20. Ramirez called Zinnikas the “weakest link.”
21. Ramirez talked about women by stating that “you want to either fuck ‘em or kill ‘em,” or “you either want to fuck ‘em or fight ‘em.”
22. When speaking to a female doctor participant, Ramirez said, “You need to take the cotton balls out of your ears and stick them in your...mouth,” as if it was obvious he wanted to say a different private body part.
23. Ramirez would refer some female participants to Zinnikas or McGauley because he believed the participant had “daddy issues.”
24. Ramirez stated that a male participant was “crying like a little girl.” When Zinnikas asked him not to use sexist language, he puffed up and walked over to lean over her desk, angrily and threateningly stating, “That goes two ways” and that Zinnikas had no right to correct him.
25. Ramirez would refer to the all-female MPAP staff as the “girls” and did not seem to respect them as professionals.
26. Ramirez regularly told a story about how MPAP will not be going with a particular vender because the representative, who is a gay man, “hit on me” at a conference and he did not “want to do business with a man like that.” McGauley asked Ramirez to stop telling this story, and Ramirez leaned in closer to McGauley and said, “Request denied.”
27. Many times Ramirez has told the joke, “A blind man walked through a fish market, tips his hat and says, ‘Good evening, ladies.’”
28. When told he was inappropriate, Ramirez responded, “That’s your perception! Women perceive things differently, that’s a fact!” He would also say he was not going to “tiptoe” around a woman’s feelings.

29. Ramirez referred to unpopped popcorn kernels as “Old maids,” referring to old women who are still virgins.
30. Ramirez would frequently make the comment, “Always waitin’ on a woman,” if he was waiting for something.
31. Ramirez described cookies his daughter had made as, “raging bitch cookies.”
32. If one of the women would make a comment or give input, on some occasions Ramirez would respond, “Grow, little grass. Grow,” in a childish, condescending way.
33. On or about January 11, 2020, Ramirez yelled at McGauley to “get the fuck out of my office.”
34. When Roane requested that the whole staff undertake additional seminars on effective communications, Ramirez responded that he was raised by women and has lots of sisters and has raised five daughters, so he does not need someone telling him he needs education on effective communication.
35. Ramirez said that MPAP now had someone in Joutovsky who could handle the political pressure that goes along with the job, so they would no longer need the position that Zinnikas and McGauley were training for.
36. Ramirez would be controlling and micromanaging with the women’s work. He would also be dismissive of their input or would shut them down while attempting to talk. Other times he would completely ignore them when attempting to perform work duties. He did not treat the male staff member this way.
37. Ramirez has a history of this type of behavior, and a former employee alleged a similar claim of harassment against Ramirez in 2002. In that claim, the charging party alleged, among other things, that Ramirez called her a “controlling bitch” and a “fucking manipulative bitch.” Upon information and belief, Ramirez was terminated by MPAP at that time but subsequently asked for and received his job back despite the history of harassment of a female employee.

Joutovsky Actions

38. Also during this relevant time period, Joutovsky would often and repeatedly make inappropriate and offensive statements and comments.
39. Joutovsky would refer to the all-female MPAP staff as the “girls.”
40. Joutovsky told his female dog in the office that she was not listening, so she must be on her “period.” When McGauley told him this was not appropriate, he stormed off to his office and yelled “Why don’t you sue me!” Previously, when his dog had

been groomed, Zinnikas commented that she looked embarrassed with the new haircut, and Joutovsky said, "She doesn't know she's a woman."

41. When two women were seen talking or arguing, Joutovsky made a cat "reow" sound and asked if he was going to see them "mud wrestle." When neither woman responded to him, he said he must have said something wrong and offended them. When Roane acted like she did not hear it, he said it was a good thing she did not hear it.
42. On November 23, 2020, when Joutovsky had a question about turning lights on in the kitchen, Roane (who was working from home due to office rotation) responded to explain the switches and motion sensor and stated that Zinnikas was also in the office and she could help. Joutovsky responded, "Thanks Amber, especially for having no trust in the men's ability to fix stuff and referring me to Cecilia for help [laughing emoji] (it's a joke) I will call an electrician. [thumb's up emoji]."

Joutovsky Preferential Treatment

43. Ramirez treated Joutovsky much differently than he treated the women employees.
44. Joutovsky is from Whitehall and was paid for his time commuting to and from work on those days. He was essentially clocked in during his drive time. The women staff members were expected to be performing work duties during their clocked-in work time. The women were also denied travel for work purposes.
45. Joutovsky was often late for work with no adverse consequences or commentary, but the women staff members were expected to be on time for work every day.
46. Joutovsky missed two days of work but was not docked any pay. Conversely, Ramirez wanted to have Zinnikas's pay docked for missing one half-day for COVID test results.
47. Joutovsky was allowed to sleep in the office frequently, almost daily, and struggled to stay awake during trainings or meetings, which Ramirez excused because he said Joutovsky was tired from so much travel. All other staff would be expected to stay awake at work.
48. Joutovsky slept for approximately an hour one day in the office when he was not feeling well. Ramirez had him go home to rest for the remainder of the day. When Roane asked Ramirez how to document that sick time, he told her to not do anything because Joutovsky went home to work.
49. Joutovsky started his employment at \$58,000 per year with no clinical experience, while McGauley started her employment at \$55,000 per year also with no clinical experience. Zinnikas only started her employment at \$60,000 per year but with significant clinical experience and extensive experience in this field.

50. Joutovsky expressed he wanted to earn more money, so Ramirez allowed him to claim mileage in order to increase his take-home pay, but Zinnikas and McGauley would not be allowed to do that. Later, Ramirez mentioned a grant that would allow Joutovsky to increase his pay.
51. On November 18, 2020, Ramirez discussed with Roane the fact that he was attempting to use the COVID grant funds that MPAP had received to get Joutovsky a pay raise. Roane questioned this because the Board had said it should be used for program costs. Roane asked Ramirez about Christmas bonuses, and Ramirez said they were unwarranted and would not be given this year, which is contrary to prior years.
52. Joutovsky told the female staff members that they did not get Christmas bonuses because he got a salary. They originally believed it was because of Covid.
53. On November 25, 2020, Joutovsky missed a test he was supposed to have taken. Joutovsky said he did not have the correct materials, and Ramirez excused his failure. Joutovsky later told Roane he was hunting with friends for most of the days and away from his house.
54. Zinnikas and McGauley were not allowed to travel to or attend professional peer support functions around the state, often having COVID cited as the reason. Joutovsky, however, was allowed to do so and even hosted caduceus gatherings at his own home, which given his status is contrary to industry standards and contrary to this the treatment of the women staff members.

10/13/20 Write-Ups

55. On October 13, 2020, Ramirez issued McGauley a write-up. McGauley had never previously been written up before. The write-up states it is in direct response to her raising the gender disparity in caseloads between Ramirez and the two women Clinical Coordinators, as well as concerns about Joutovsky's preferential treatment.
56. Also on October 13, 2020, Ramirez issued Zinnikas as write-up. Zinnikas had never previously been written up before. The write-up states she failed to contact four participants in the Flathead area for a meeting and that they got notice at the time of the meeting. Ramirez acknowledges Zinnikas's statement that this was a technology glitch with a blind cc function, as the other participants did receive prior notice of the meeting. Zinnikas did notice the other participants, and all but one were able to attend the meeting.
57. Zinnikas and McGauley issued lengthy formal responses, addressing the facts of the incidents and stressing that the actions against them were retaliatory and asking the Board to look into discriminatory behavior by Ramirez.

Continued Complaints and No Response

58. On October 20, 2020, McGauley emailed a Board member about Ramirez's hostility toward her.
59. On October 20, 2020, Zinnikas and McGauley requested to Ramirez that they be allowed to travel to Missoula to meet with program participants in that area. Ramirez denied their request, but he allowed Joutovsky to do similar travel and meeting events.
60. Per the MPAP employer handbook, employee complaints or grievances shall be addressed within fourteen (14) days from the initiation of the complaint or grievance. No response had been received, so on October 29, 2020, Zinnikas and McGauley wrote another letter, confirming that they had previously reported to the Board the unfair disciplinary actions against them, a hostile work environment, Ramirez's discriminatory behavior, and requesting Board intervention.
61. On November 13, 2020, when no response had been received, MPAP's insurance company wrote a letter to MPAP acknowledging receipt of a reported claim by "Claimant[s]: Meg McGauley, Cecilia Zinnikas." McGauley reported to a Board member that this was concerning to her because they had not filed an insurance claim. She requested a copy of the claim report, but was never given one.
62. On or about November 19, 2020, Ramirez came up to a desk where Roane and McGauley were. He slammed his fists on the desk, hovered over McGauley, got in her face and yelled, "Good morning Meg, how are you!?" in an aggressive, intimidating manner.
63. Later, McGauley walked by Ramirez in the office, and he got up close to her and stared her down in an intimidating manner.
64. The next day, McGauley reported these incidents to a Board member, stating that Ramirez's behavior toward the women had progressed significantly, that she was worried about the aggressive behavior. She prayed things would not get worse.
65. The women began working with each other to come into the office together, so they would not have to be alone with Ramirez.
66. On or about November 20, 2020, Roane emailed a Board member asking for a meeting with him and possibly another Board member, but she was told to simply "be patient as a 'Plan' is in place."
67. It is believed that not until late November 2020 that MPAP retained an investigator to look into the women's complaints and the ongoing mistreatment. The women have never been told of the results of any investigation.

68. On or about November 21, 2020, Board members internally debated whether they should tell the staff that an “HR company” had been hired, in order to “cool things down a bit.”
69. In December 2020, Zinnikas reported to Ramirez of Joutovsky’s disrespectful, sexist, and demeaning treatment of women staff. Fourteen days later, Ramirez responded that the “matter is complete,” without any explanation or resolution identified.
70. On approximately December 3, 2020, Roane requested to meet with a Board member for coffee, wanting to discuss some of the concerning issues at MPAP referenced above. Roane was advised that the Board was instructed not to interact with any MPAP staff members during that time. Despite this, another Board member came to the office and spoke with Ramirez (also an MPAP staff member) for approximately 30 minutes. Roane emailed a Board member to report this, and he responded by saying essentially, “What do you want me to do about it? If I report this, I would have to name you as the person complaining, and do you want me to do that?”
71. On December 11, 2020, Ramirez treated the female staff members condescendingly regarding a labor law posting.
72. On December 14, 2020, when no action had still taken place, McGauley emailed a Board member again expressing her concern over Ramirez’s misbehavior and mistreatment in the office, his enabling of Joutovsky to treat the women staff with the same demeaning interactions as himself, and the MPAP Board’s continued delays in responding to the situation. She stated that Ramirez has made it very difficult for her to do her job, he would not even let her speak without shutting her down with condescending or patronizing responses.
73. Roane, Zinnikas, and McGauley and were interviewed by the outside HR person. The Board, Ramirez, and Joutovsky knew of this involvement.
74. In early January, McGauley was confronted by a non-MPAP employee saying that Ramirez was at a meeting saying that a “hostile takeover” was occurring at MPAP.

Additional Disciplinary Actions

75. On or about January 11, 2021, Ramirez wrote up McGauley again. This incident report concerned McGauley’s communications with a licensing board about reactivation of a participant’s license and for subsequently contacting the board member for clarification. This is the same participant who Ramirez previously berated for attempting suicide incorrectly, which was reported to the Board. Ramirez stated in this write-up, “We have the inactive license status in our toolkit for medical licenses because the Medical Board trusts me and my judgement. That trust has been earned one case at a time over many years.” This request, however,

was proper and appropriate because of how that inactive status came about and her re-enrollment in the program subject to a no-practice agreement. McGauley called the licensing board member back for clarification, *at Ramirez's demand*. This write-up was unfair, retaliatory, and McGauley wrote a lengthy response letter objecting to the write-up.

76. The next day, January 12, 2021, Ramirez wrote up McGauley again for sending a consultation report to the Nursing Board without his input approximately a week prior. This was never mentioned until after the previous day's write-up incident. When handing McGauley the write-up, he said she "intentionally defied" his orders, which was not true. In the past, they had all been told that his signature was not necessary on every document. Nonetheless, she had copied him on every communication to licensing boards since November 23, 2020, except this one. This write-up is explicitly retaliatory, with Ramirez writing, "in the face of office disruption, I am acting to preserve all that I have worked diligently to build up over the past 25 years." This write-up for insubordination is not appropriate under the circumstances of the situation
77. Ramirez fired McGauley on January 22, 2021, and refused to give her a reason why.
78. Ramirez disabled Zinnikas's laptop access after McGauley was fired.
79. On January 26, 2021, Ramirez walked into Zinnikas's office and dropped a large stack of documents on her desk and told her to give these documents to McGauley if she sees her. Zinnikas later said she was not comfortable delivering materials to this fired employee.
80. At the end of January, Joutovsky stated to Roane that Zinnikas should be docked two weeks of vacation, when Zinnikas was working from home awaiting Covid test results.
81. Also on January 26, 2021, a Board member came into the office and spoke with Ramirez. Zinnikas sat in on part of the discussion and attempted to communicate with the Board member about these complaints that have been going on. The Board member said that is not why he came here and continued to ignore her. Zinnikas attempted to discuss this more, and the Board member snapped at her, saying the Board is annoyed at what has been going on and that the Board members feel like principals dealing with seventh graders in a very demeaning manner.
82. On January 28, 2021, Zinnikas met with the Board President. She was essentially informed that Ramirez won and that the Board viewed the complaints as from seventh graders. He said that the Board has always maintained primary support of Ramirez as MPAP Director, to which Zinnikas asked if that meant that it really believed that the female staff colluded and conspired to undermine Ramirez and MPAP. He responded, "You may interpret my statement however you like."

83. On January 29, 2021, a deranged person called MPAP's office asking for McGauley. Roane said she did not work here anymore, and the person began talking about other ways to locate or contact her. The caller became irate and threatened to kill McGauley if he sees her again. Roane immediately called the police to report the matter. When Ramirez came into the office and learned about the incident, he became upset with Roane for calling the police and said she should not have done that because it is none of our business. Roane did immediately inform McGauley for her safety.
84. In January 2021, Ramirez took away some of Roane's office managerial and HR duties.
85. Ramirez fired Roane on February 2, 2021, telling her she was being let go. He asked her about a flash drive at her computer that had a copy of employee files and a staff letter on it. Roane explained that she had access to employee files and backed them up on a flash drive as always. The staff letter was found on her desk and saved to document the discrimination and retaliation that had been occurring in the office. Ramirez said she was being fired for breach of information and that he was reaching out to the FBI due to these cybersecurity issues. Roane asked if that was a threat that he was going to call the FBI on her. Ramirez said no, he only meant for future security at MPAP.
86. Zinnikas knew that, based on the totality of the circumstances, including the actions by Ramirez and Joutovsky and by the indifference and lack of protection displayed by the Board, that it would be impossible for her to work there and that she would be fired next. Zinnikas was forced to resign because of constructive discharge on February 2, 2021. Her letter states that her resignation is due to the Board's failure to address the toxic workplace issues brought to its attention on September 18, 2020, and thereafter, which exacerbated the hostile work environment at MPAP to the point where resignation was her only option.

Violation of Title VII of the Civil Rights Act and the Montana Human Rights Act

87. Respondent engaged in a pattern of sex discrimination and retaliation based on mistreatment of women staff, preferential treatment of the male staff member, sexualized, offensive and demeaning jokes, comments and actions to and in the vicinity of the women staff including the Charging Party, by a supervisor and also by a co-worker. Charging Party was improperly subjected to adverse employment actions, up to and including termination.
88. These women experienced, observed, and/or learned about the harassment, discrimination, and retaliation occurring in the office to each other, which compounded the effects of these actions. Courts have long recognized that "[t]he sexual harassment of others, if shown to have occurred, is relevant and probative of [a defendant's] general attitude of disrespect toward his female employees, and his sexual objectification of them." *Heyne v. Caruso*, 69 F.3d 1475, 1479-81 (9th

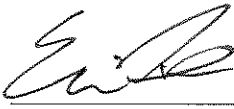
Cir. 1995); see also *Dominguez-Curry v. Nevada Transp. Dep't*, 424 F.3d 1027, 1036 (9th Cir. 2005) (concluding that evidence that other women were harassed showed that hostility pervaded the workplace and helped show that it was hostile).

89. Charging Party believes that Respondent violated of Title VII of the Civil Rights Act and Montana Human Rights Act by engaging in disparate treatment discrimination, sexual harassment, and retaliation.

90. As a result of the discrimination and retaliation, Charging Party has suffered damages including a loss of wages and benefits, gross-up recovery for taxes (*Clemens v. Centurylink, Inc.*, 874 F.3d 1113, 1116 (9th Cir. 2017)), emotional distress, humiliation, embarrassment, damage to reputation, deprivation of equal employment opportunities, attorneys' fees, and other damages and losses, for which Charging Party seeks all remedies available under the law, including punitive damages, liquidated damages, and equitable relief.


DATE: 3/17/21

HOLM LAW FIRM, PLLC

By: 
Eric E. Holm
Attorney for Charging Party

VERIFICATION

I, **Amber Roane**, swear or affirm that I have read the above charge and I declare under penalty of perjury that the foregoing is true and correct.

Signature: 

Date: 03/17/2021