IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

THOMAS E. PEREZ,)
SECRETARY OF LABOR, UNITED STATES) CIVIL ACTION
DEPARTMENT OF LABOR,) CASE NO.
Plaintiff,) COMPLAINT – Labor) 29 U.S.C. §651, et seq.
v.)
IFCO SYSTEMS N.A., INC.,))
Defendant.)
	•

COMPLAINT

Plaintiff, THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor ("Plaintiff" or "the Secretary") brings this action to enjoin Defendant, IFCO SYSTEMS N.A., INC. ("IFCO"), from violating provision 11(c) of the Occupational Safety and Health Act of 1970 ("the Act"), (29 U.S.C. §651 *et seq.*), and for a judgment against Defendants for back wage compensation, reinstatement and/or front wages, and any other relief found by the Court to be due to former employee Deborah Walters.

I

Plaintiff brings this action for injunctive and other relief, pursuant to §11(c) of the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), ("the Act") seeking to enforce the provisions of §11(c) of the Act.

II

Jurisdiction of this action is conferred upon the Court by 29 U.S.C. §660(c)(2), namely

 $\S11(c)(2)$ of the Act.

III

Defendant is a corporation under the laws of the State of Delaware and is headquartered at 13100 Northwest Freeway, Houston, TX 77040. Defendant also has a place of business located at 3177 Biglerville Rd, Biglerville, PA 17307, which is where the conduct alleged in this Complaint occurred. As such, this Court is the proper venue for this action.

IV

Defendant is now, and has been at all times material herein, a person as defined in 29 U.S.C. §652(4) because it is a corporation.

V

Defendant is now, and has been at all times material herein, an employer within the meaning of 29 U.S.C. § 652(5) because it is a person engaged in a business affecting commerce who has employees.

VI

At all times material herein, Deborah Walters was an employee as defined by 29 U.S.C. §652(5) and Defendant was an employer as defined by 29 U.S.C. §652(6) because Ms. Walters worked at Defendant's Biglerville, Pennsylvania location as the office manager, beginning on February 20, 2013.

VII

On April 8, 2014, Ms. Walters complained to Defendant about suspected mold that was found behind the filing cabinets in the plant office.

VIII

On April 17, 2014, when Defendant still had not taken any action to correct the unhealthful

condition, Ms. Walters made an anonymous complaint to the Occupational Safety and Health Administration (OSHA), a component of the Department of Labor, regarding the mold and a potential electrical hazard.

IX ·

On April 17, 2014, OSHA notified Defendant of this safety complaint by telephone and facsimile.

X

Following notification of the OSHA complaint, Defendant hired contractor GES to sample the mold. In a letter dated April 25, 2014, GES informed Respondent that there was "significant active mold growth occurring on the wall behind the filing cabinet" and that there were elevated spore counts of Stachbotrys Mold, a "toxigenic and neurological mold." The letter states that mold remediation will be required and "should be completed as quickly as possible."

XI

Between April 8, 2014, and June 13, 2014, Complainant made repeated complaints to Defendant about her continued exposure to the mold hazard in the plant office and Defendant's delay in removing all affected employees from that work space.

XII

On July 1, 2014, less than three weeks after Ms. Walters' most recent request not to work in the moldy office because of the negative impact the continued mold exposure was having upon her health, Defendant discharged Ms. Walters.

XIII

Ms. Walters filed a complaint with OSHA on July 15, 2015, alleging that the Defendant discharged her in violation of §11(c)(1) of the Act. 29 U.S.C. §660(c)(1).

XIV

Plaintiff thereafter investigated the above complaint in accordance with §11(c)(2) of the Act and determined that Defendant violated §11(c)(1) of the Act when it discharged Ms. Walters because she had engaged in the protected activities set forth in paragraphs VII, VIII, and XI. 29 U.S.C. §660(c)(1) and (c)(2).

XV

By the act described in paragraph XII, Defendant discharged Ms. Walters because she engaged in protected activity under the Act, as set forth in paragraphs VII, VIII, and XI, and thus Defendant violated §11(c)(1) of the Act. 29 U.S.C. §660(c)(1).

XVI

To date, Defendant has failed to reinstate Ms. Walters and to compensate her for lost wages and other damages suffered as a result of her improper termination, in continued violation of \$11(c)(1) of the Act. 29 U.S.C. §660(c)(1).

WHEREFORE, cause having been shown, Plaintiff prays for a Judgment against Defendant as follows:

- (1) For an Order permanently enjoining Defendant, its officers, agents, servants, employees and all persons acting or claiming to act in their behalf and interest from violating the provisions of §11(c)(1) of the Act (29 U.S.C. §660(c)(1)); and
- (2) For all appropriate relief, including reinstatement, payment to Ms. Walters for lost wages and benefits, including interest thereon, compensatory damages, including damages for emotional distress, interest on compensatory damages for pecuniary losses, consequential damages, including attorney's fees, and punitive damages to deter such conduct by Defendant in the future;

and

- (3) For an Order requiring posting in a prominent place for 60 (sixty) consecutive days of a notice stating Defendant will not in any manner discriminate against employees because of engagement, whether real or perceived, in activities protected by §11(c) of the Act, and for the costs of this action; and
- (4) For an Order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted this 3rd day of March, 2016.

M. PATRICIA SMITH Solicitor of Labor

OSCAR L. HAMPTON III Regional Solicitor

JENNIFER L. BLUER Trial Attorney PA Bar 307299

Jennifer, L. Bluer

ATTORNEYS FOR PLAINTIFF

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

purpose of initiating the civil do	ocket sneet. (SEE INSTRUCT	IONS ON NEXT PAG	E OF THIS F	ORM.)			
(a) PLAINTIFFS Thomas E. Perez, Secretary of Labor United States Department of Labor			DEFENDANTS IFCO SYSTEMS N.A., INC.				
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)			County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.				
(c) Attorneys (Firm Name, Address, and Telephone Number) Jennifer L. Bluer, Esq. 170 S. Independence Mall West, Suite 630E Philadelphia, PA 19106				Attorneys (If Known) James (Jay) Seegers, Esq. Baker Hostetler Sun Trust Center 200 South Orange Street, Suite 2300 Orlando, FL 32801			
II. BASIS OF JURISDI	ICTION (Place an "X" in C	ne Box Only)	III. CIT	IZENSHIP OF PRI	NCIPAL PARTIES (Pla	ace an "X" in One Box for Plaintiff	
☑ 1 U.S. Government Plaintiff	□ 3 Federal Question		For Diversity Cases Only) PTF DEF In of This State				
2 U.S. Government Defendant	(Indicate Citizenship of Parties in Item III)			zen of Another State	of Business In A	Another State	
				zen or Subject of a preign Country	3 Soreign Nation	□ 6 □ 6	
IV. NATURE OF SUIT	(Place an "X" in One Box Or	ıly)					
CONTRACT	TOF			ORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise 196 Franchise 197 Product Liability 197 Proceedings 198 Property 198 Professional 198 Property 198 Professional 198 Property 199 Professional 199 Property 199 Product Liability 199 Property 199 Property	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury - Medical Malpractice CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities Employment 446 Amer. w/Disabilities	PERSONAL INJ 365 Personal Injur Product Liabi 367 Health Care/ Pharmaceutice Personal Injur Product Liabil 368 Asbestos Pers Injury Product Liability PERSONAL PROI 370 Other Fraud 371 Truth in Lend 380 Other Persona Property Dam Product Liabil PRISONER PETIT Habeas Corpus: 463 Alien Detaine 510 Motions to Va Sentence 530 General 535 Death Penalty Other: 540 Mandamus & 550 Civil Rights 555 Prison Condit 560 Civil Detaine Conditions of	URY 6 y - lity 6 al y ity onal at PERTY 7 ing 7 age 7 age 17 IONS 7 Cother 4 Other 4	25 Drug Related Seizure of Property 21 USC 881 90 Other LABOR 10 Fair Labor Standards Act 20 Labor/Management Relations 40 Railway Labor Act 51 Family and Medical Leave Act 90 Other Labor Litigation 91 Employee Retirement Income Security Act IMMIGRATION 62 Naturalization Application 65 Other Immigration Actions	422 Appeal 28 USC 158 423 Withdrawal	375 False Claims Act 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes	
V. ORIGIN (Place an "X" in	Out Bay Outs	Confinement					
🔟 1 Original 🔲 2 Rer	noved from 3 Rema te Court Appe	llate Court	Rec	pened Anot			
VI CAUSE OF			are filing (I	Oo not cite jurisdictional statu	tes unless diversity):		
VI. CAUSE OF ACTION	29 U.S.C. section 651, e	30	al Cara	ad Haalth A -4			
Violation of section 11(c) of the Occupational Safety and Health Act. VII. REQUESTED IN CHECK IF THIS IS A CLASS ACTION DEMAND \$ CHECK YES only if demanded in complaint:							
COMPLAINT: UNDER RULE 23, F.R.Cv.P. JURY DEMAND: ☐ Yes ☒ No							
VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER							
DATE SIGNATURE OF ATTORNEY OF RECORD							
03/03/2016 Jen Dhe							
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