

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

ERIN BOWEN,

Plaintiff,

vs.

Cause No.           D-202-CV-2021-05954          

VIP STARNETWORK LLC, and  
JOHONNIUSS CHEMWENO.

Defendant.

**COMPLAINT FOR RETALIATORY DISCHARGE, AND INTENTIONAL  
INFLICTION OF EMOTIONAL DISTRESS**

**COMES NOW** Plaintiff, Erin Bowen, by and through her counsel of record,  
Rachel Berenson, of BERENSON & ASSOCIATES, P.C., and hereby brings this  
Complaint pursuant to the Retaliatory Discharge State Statute and other State law claims.  
As grounds for this Complaint, Plaintiff states as follows:

**PARTIES**

1. Plaintiff, Erin Bowen, is a resident of Bernalillo County, New Mexico.
2. At all times relevant to her Complaint, Plaintiff was an employee of VIP StarNetwork LLC, located in Albuquerque, New Mexico.
3. Upon information and belief, VIP StarNetwork LLC, is a for-profit limited liability corporation doing business in New Mexico, with a corporate mailing address of 4904 Alameda Blvd Suite B, Albuquerque, NM 87113.
4. Upon information and belief, Defendant, Johonniuss Chemweno, is the CEO and owner of VIP StarNetwork LLC, and resides in Albuquerque, New Mexico.

## **VENUE AND JURISDICTION**

5. Plaintiff incorporates by reference paragraphs 1 through 4 above as if restated hereafter.

6. The facts and allegations of this Complaint occurred in the City of Albuquerque, County of Bernalillo, State of New Mexico.

7. Venue is proper in the Second Judicial District.

8. The Second Judicial District Court has subject matter jurisdiction.

## **FACTS**

9. Plaintiff incorporates by reference paragraphs 1 through 8 as if restated hereafter.

10. On November 8, 2020, Plaintiff began working for VIP StarNetwork, LLC in the laboratory and was promoted to Lab Supervisor on February 1, 2021.

11. As Lab Supervisor, Plaintiff was responsible for coordinating all technical, logistical, and administrative functions to ensure prompt and accurate testing and reporting of laboratory results for all samples collected which were being tested for the COVID-19 virus.

12. While working at the mobile lab Plaintiff Bowen received two samples that only had initials on the samples. The samples were in the wrong medium and did not have the correct identifying information or date and time of test. She refused to run these samples because doing so could give false negatives and she would not run that risk.

13. Tim Drake the Lab Manager and Chief Operating Officer, became outraged at Plaintiff Bowen. He yelled and begged her to run the samples. Plaintiff

Bowen would not budge and from that point forward, Plaintiff Bowen started to see more secretive behaviours.

14. In early February 2020, VIP StarNetwork, LLC began testing students at the Albuquerque Academy and by March 2020, they had moved their mobile lab to the Albuquerque Academy (a local private school) in Albuquerque, New Mexico.

15. Plaintiff Bowen was instructed that the medical assistants and nurses employed by VIP StarNetwork, LLC would be collecting samples from students that were now back in school full time.

16. The samples that the medical assistants and nurses were collecting were labelled “Nasal” which is what VIP StarNetwork, LLC’s lab is certified to test on.

17. The testing of the student body began on or around February 2021. At the height of the testing, VIP StarNetwork, LLC was testing approximately 1,000 students a week.

18. On or around March 29, 2021, Plaintiff Bowen learned that the medical assistants and nursing staff were actually collecting samples through “Buccal” swabs (swabbing the mouth), rather than, “Nasal” swabs.

19. Plaintiff Bowen, who was part of the medical staff on March 30, 2021, even witnessed the medical assistants and nursing staff collect samples from the students using the Buccal swab technique.

20. Plaintiff Bowen noted that the supervising Nurse, Demerie Danielson, was present when all of her medical assistants and nurses were collecting samples by swabbing the inside of student’s mouths, rather than, the nasal cavity.

21. Plaintiff Bowen immediately reported this to her Supervisors, including but not limited to, Tim Drake, and the doctor overseeing the Lab.

22. Plaintiff Bowen was informed that the issue would be addressed with the supervising Nurse to make sure that her staff was collecting samples correctly.

23. The following afternoon, Plaintiff Bowen had a conversation with the supervising Nurse who stated that she understood the directive. Nonetheless, that Nurse continued to have her staff obtain samples from the students via buccal swabs as opposed to nasal swabs.

24. Upon information and belief, the supervising Nurse told the collecting nurses and medical assistant that the “lab is refusing to run their samples and to just make sure to put ‘Nasal Pharyngeal’ on the label.”

25. On April 8<sup>th</sup>, 2021, Plaintiff Bowen sent a letter to Mr. Chemweno, Mr. Drake, and Dr. Mike Miller, stating that she felt like the Lab and her credentialing was in jeopardy for not collecting samples correctly. She stated that this needed to be changed immediately as VIP StarNetwork, LLC was fraudulently giving test results which could not be certified as accurate, thereby, placing the entire student population and their families at risk. She demanded a change and that she be able to ensure that this change was being implemented through her personal observation.

26. Tim Drake and VIP StarNetwork’s response was to ask whether Plaintiff Bowen had told anyone else about what she had observed and threatening her for making this report.

27. Tim Drake further responded that the executive team met and determined that she was not allowed to observe the testing or sample collection.

28. At this juncture, Plaintiff Bowen had no other option but to resign as Lab Supervisor because VIP StarNetwork, LLC was placing her credentials at risk and was allowing fraud to occur. Therefore, she was constructively discharged as she had no other meaningful choice but to resign.

**COUNT I: RETALIATORY DISCHARGE**  
***(Erin Bowen v. VIP StarNetwork, LLC)***

29. Plaintiff incorporates allegations set forth in paragraphs 1-28 as if restated herein.

30. By reporting the inaccurate sample collection, Plaintiff performed an act that public policy authorizes and would encourage.

31. By upholding her duties as the Lab Supervisor and by upholding her morals, Plaintiff performed acts that public policy authorizes and would encourage.

32. By reporting the inaccurate collection of samples and testing methods, Plaintiff Bowen was ensuring that young students and their families were not being placed at risk for false negative COVID-19 results, which could potentially lead to the death of students and/or their family members.

33. Nothing about this report was for personal gain. In fact, Plaintiff Bowen was very fearful of what repercussions would result for she had seen other VIP employees report unethical violations and later be terminated.

34. Plaintiff was constructively discharged as she had no other meaningful choice but to resign.

35. Defendant's motive was to retaliate against Plaintiff.

**WHEREFORE**, Plaintiff respectfully requests this Court enter judgment against the Defendants and award Plaintiff compensatory damages, Attorney's fees, and any other damages this Court or the trier of fact deems just.

**COUNT II: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
***(Erin Bowen v. Defendants)***

36. Plaintiff incorporates paragraphs 1 through 35 as if restated hereafter.

37. The Defendants' conduct was extreme and outrageous, was reckless, intentional, wanton, and malicious.

38. Defendants' conduct was intended to cause Plaintiff severe emotional distress and did, in fact, cause emotional distress to the Plaintiff.

39. As a direct and proximate cause of the unjustified conduct of the Defendants, Plaintiff has suffered damages in an amount to be proven at trial.

40. The conduct of Defendants were intentional in all regards, and these acts were willful, wanton, malicious, reckless and grossly negligent so as to warrant an additional award of punitive damages as punishment to deter others from committing similar offenses in the future.

**PRAYER FOR RELIEF**

Plaintiff demands judgment be entered on her behalf and against Defendants, that she be reinstated and be awarded all damages, both actual, special, and punitive, allowed by law, and for statutory attorney's fees and costs, and all other and further relief deemed by the Court to be just and proper.

Respectfully submitted:

BERENSON & ASSOCIATES, P.C.

/s/Rachel Berenson

Rachel Berenson

415 6<sup>th</sup> St. NW

Albuquerque, NM 87102

Tel.: (505) 243-4400

Fax: (505) 243-4405

[rachel@nmjusticelaw.com](mailto:rachel@nmjusticelaw.com)