

**ENDORSED FILED**  
Clerk of the Superior Court

SEP 2 2011

By C. CLARK  
Deputy Court Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SOLANO  
DEPARTMENT SIXTEEN

\* \* \* \*

DENISE WINTERS,

CASE NO: FCS035144

Plaintiff on behalf of herself  
and the general public

**ORDER AFTER HEARING**

vs.

**(Hearing Date: September 1, 2011)**

COUNTY OF SOLANO, et al.

Defendants.

\_\_\_\_\_ /  
The Motion for Summary Judgment/Summary Adjudication filed by defendant, County of Solano, in the above-entitled matter came on regularly for hearing on September 1, 2011, the Honorable Scott L. Kays, Judge presiding. Attorneys, Bryan Schwartz, Hillary Benham-Baker and Jean Hyams, appeared on behalf of plaintiff, Denise Winters. Attorneys, Carolee Kilduff and John A. Whitesides, appeared on behalf of defendant, County of Solano.

The Court, having taken the matter under submission and having considered the arguments of the parties and the papers and records on file, and good cause appearing,

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2 **FINDS AND ORDERS AS FOLLOWS:**

3 The motion for summary judgment is denied. The matter of the Tort Claim presentation  
4 was decided at the motion for judgment on the pleadings. There are triable issues of material fact  
5 as to whether the elimination of plaintiff's OA III position effective July 25, 2009, was retaliation  
6 for plaintiff's whistleblowing activities that culminated in the final report issued in January 2009.  
7 (*Patten v. Grant Joint Union High School* (2005) 134 Cal. App. 4th 1378; Labor Code §1102.5.)  
8 Defendant has proffered evidence, disputed by plaintiff (Plaintiff's Separate Statement responding  
9 to DUMF 16, 18, 21, 22, 23, 27); and, plaintiff has proffered evidence, demonstrating there are  
10 triable issues of material fact (PUMF 1-21, 23-44, 46-81).

12 County's motion for summary adjudication to preclude plaintiff from asserting damage  
13 claims under Labor Code §1102.5, including those for emotional distress, is denied. (*Gardenhire*  
14 *v. Housing Authority of City of Los Angeles* (2000) 85 Cal. App. 4th 236.) Labor Code §1105  
15 allows the employee to sue for damages for a violation of Labor Code §1102.5. Emotional  
16 distress damages are a recoverable component of compensatory damages and are not preempted  
17 by workers' compensation when the employee sues for violation of express statutory provisions  
18 (here, Labor Code §1102.5). (*Phillips v. Gemini Moving Specialists* (1998) 63 Cal. App. 4th  
19 563.)  
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21  
22 County's motion for summary adjudication to limit plaintiff's damages to Labor Code  
23 §98.6 is denied. Section 98.6 does not act to limit plaintiff's damages to recovery of lost wages  
24 and benefits only.

25 County's motion for summary adjudication is granted as to the following only:

26 (a) County is not subject to "a civil penalty not exceeding ten thousand  
27 dollars", because County is not a corporation or limited liability company. (Labor Code  
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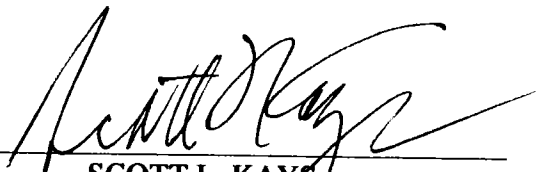
§1102.5(f.)

(b) County is subject to Labor Code §2699. (Labor Code §§1102.5, 1106, 2699.5, 2699.3(a).) However, the civil penalties in Labor Code §2699(f) do not apply to County because the definition of “person” in Labor Code Section §18, referenced in Labor Code §2699(b), does not include a public entity. (*Wells v. One2One Learning Foundation* (2006) 39 Cal. 4th 1164.)

Plaintiff’s evidentiary objections are overruled. Rulings on the defendant’s evidentiary objections are as noted on the formal order submitted by defendants, only; defendants failed to number their objections consecutively as required by CRC 3.1345(b).

**IT IS SO ORDERED.**

Dated: September 2, 2011

  
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SCOTT L. KAYS  
JUDGE OF THE SUPERIOR COURT

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SOLANO**

**CASE NUMBER: FCS035144**

**CERTIFICATE OF MAILING**

I, Christine L. Clark, certify under penalty of perjury that I am a judicial assistant/deputy clerk of the above-entitled court and not a party to the within action; that I am familiar with the County of Solano's procedure for collection and processing of correspondence for mailing with the United States Postal Service. This document will be deposited with the United States Postal Service on the same day as the execution of this document in the ordinary course of business. This document was sealed and placed for collection and mailing on the same day as the execution of this document at the address given for deposit in the United States Postal Service and following ordinary business practices. Said envelopes were addressed to the attorneys for the parties, or the parties, as shown below:

**Document Mailed: ORDER AFTER HEARING**

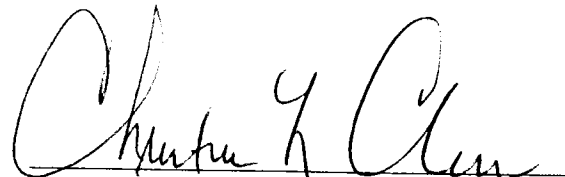
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*Discovery Referee***

**Dated: September 2, 2011**

  
**CHRISTINE L. CLARK - DECLARANT**