



Chambers of  
SCOTT L. KAYS, Judge  
Department 16

## Superior Court of California County of Solano

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DATE: March 28, 2012

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FROM: Christine L. Clark  
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COMMENTS: \_\_\_\_\_

***Winters v. County of Solano, FCS035144  
Order After Hearing***

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**ENDORSED FILED**  
Clerk of the Superior Court

MAR 28 2012  
C. CLARK

By \_\_\_\_\_  
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: March 27, 2012)**

COUNTY OF SOLANO, et al.

Defendants.

\_\_\_\_\_/

The Motion to Strike Attorney Fee Request filed by defendant, County of Solano, in the above-entitled matter came on regularly for hearing on March 27, 2012, the Honorable Scott L. Kays, Judge presiding. Attorneys, Bryan Schwartz and Jean Hyams, appeared with plaintiff, Denise Winters. Attorney, 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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**FINDS AND ORDERS AS FOLLOWS:**

1. The motion to strike attorney fees under Labor Code §2699(g) is granted. Labor Code §2699(a), which is applicable to the defendant County of Solano, and Labor Code §2699(f), which is not applicable to said defendant, both give an aggrieved employee the right to bring an action for a civil penalty. The provision regarding attorney fees in Labor Code §2699(g)(1) applies to an aggrieved employee proceeding under either §2699(a) or §2699(f). However, the attorney fee provision is only applicable to an action wherein the aggrieved employee's claim results in civil penalties against the employer. Plaintiff, Denise Winters, has no remaining claim for a civil penalty pursuant to Labor Code §2698 et seq. ("PAGA"). Thus, she is not entitled to claim attorney fees under §2699(g)(1). (*Harrington v. Payroll Entertainment Services, Inc.* (2008) 160 Cal.App.4<sup>th</sup> 589, 593-594.)

2. The Motion to strike attorney fees under Code of Civil Procedure §1021.5 is denied. Labor Code §1102.5, prohibiting retaliation against a whistleblower, is an important right affecting the public interest. *Edwards v. Arthur Andersen LLP* (2006) 142 Cal. App. 4th 603; *Green v. Ralee Engineering Co.* (1998) 19 Cal. 4th 66. It is premature to deny an award of Code of Civil Procedure §1021.5 attorney fees, as the court did in *Satrap v. PG&E* (1996) 42 Cal. App. 4th 72. If plaintiff prevails at trial, she is not prevented from seeking reasonable attorney fees pursuant to Code of Civil Procedure §1021.5, but she will be required to demonstrate she meets the criteria of Code of Civil Procedure §1021.5. If plaintiff is able to meet the criteria of Code of Civil Procedure §1021.5, the fact that the primary effect of the action was to vindicate plaintiff's personal economic interests does not foreclose an award of attorney fees; an award of attorney fees is appropriate except where the expected value of the litigant's own monetary reward exceeds by a substantial margin the actual litigation costs. *Robinson v. City of Chowchilla*

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(2011) 202 Cal. App. 4th 382; *Jaramillo v. County of Orange* (2011) 200 Cal. App. 4th 811;  
*Conservatorship of Whitley* (2010) 50 Cal. 4th 1206; *Satrap v. PG&E* (1996) 42 Cal. App. 4th 72.  
There is no requirement that a plaintiff must plead facts entitling plaintiff to attorney fees  
pursuant to Code of Civil Procedure §1021.5. *Snatchko v. Westfield LLC* (2010) 187 Cal. App.  
4th 469.

3. Plaintiff's request for Judicial Notice is granted only as to the legislative  
history of PAGA.

**IT IS SO ORDERED.**

Dated: March 28, 2012

  
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:

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Dated: March 28, 2012

  
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