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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 RODGER J. HARTNETT,)
11) CASE NO. 37-2008-00081583-CU-WT-CTL
12 Plaintiff,)
13 v.) Judge: Hon. Steven R. Denton
Dept: C-73

14 SAN DIEGO COUNTY OFFICE OF)
EDUCATION, DIANE CROSIER, LISA)
15 JENSEN, JOHN VINCENT, RICK)
RINEAR, LORA DUZYK, MICHELE)
16 FORT-MERRILL, RANDOLPH E. WARD)
and DOES 1 through 100,)
17 Inclusive,)
DECLARATION OF RODGER J.
HARTNETT IN OPPOSITION TO
MOTION OF SAN DIEGO COUNTY
OFFICE OF EDUCATION, RANDOLPH
WARD, AND LORA DUZYK TO STRIKE
PURSUANT TO C.C.P. § 425.16

18 Defendants.)
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DECLARATION OF RODGER J.
HARTNETT IN OPPOSITION TO FORT-
MERRILL'S SPECIAL MOTION TO
STRIKE HARTNETT'S FIRST AMENDED
COMPLAINT (C.C.P. § 425.16)

21) DATE: September 12, 2008
22) TIME: 10:30 a.m.
23) DEPT: C-73

24) Complaint filed: April 7, 2008

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1 I, RODGER J. HARTNETT, declare as follows:

2 1. I am 61 years of age. I reside in the City of San Diego.
3 The following facts are true of my own personal knowledge. All of
4 the documents lodged herewith as exhibits are true and correct
5 copies of the documents they purport to be. When called as a
6 witness herein, I can and will competently testify to the following
7 facts and evidence.

8 2. I have approximately 25 years of experience adjusting
9 insurance claims. (Exhibit 1.) I have a Juris Doctor degree.
10 (Exhibit 2.)

11 3. In July 2003, I applied for a position as a Claims
12 Coordinator with the San Diego County Office of Education (SDCOE)
13 in their Joint Powers Authority (JPA) Risk Management Department.
14 Diane Crosier interviewed me. Attorney Dan Shinoff participated in
15 the interview process. I was hired for the position. My employment
16 began on August 11, 2003. My employment was approved by Michele
17 Fort-Merrill. (Exhibit 3.)

18 4. A primary motivation for me to return to employment in the
19 public sector was the opportunity to vest in the California Public
20 Employees Retirement System (CalPERS). (Exhibit 4.)

21 5. My job duties were to adjust claims against JPA member
22 school districts. (Exhibit 5.)

23 6. Despite the fact that my job classification was listed on
24 the SDCOE Management Salary Schedule, and despite the fact that I
25 was a non-union employee, I was not a "management employee" of the
26 SDCOE or the San Diego County Superintendent of Schools, Randolph
27 E. Ward, as defined in Government Code § 3540.1(g). I did not have
28 significant responsibilities for formulating SDCOE policies or

1 administering SDCOE programs. I adjusted claims against the JPA
2 member districts.

3 7. The SDCOE management salary schedule contains 105 separate
4 job classifications. For the SDCOE to claim that all of the
5 employees employed in each of those classifications is a "management
6 employee" of the SDCOE is ludicrous.

7 8. The SDCOE Merit Systems Rules and Regulations for the
8 Classified Service contains additional distinctions between
9 management and sub-management employees, even though the SDCOE
10 claims that all employees subject to the Merit Systems Rules and
11 Regulations are management employees. For example, "No employee
12 shall work out of classification without management approval."
13 (Chapter XI, para. 5.) "A reassignment is a management-initiated
14 movement of an employee to another position in the same
15 classification." (Chapter XII, para. 2(A).) As a Claims
16 Coordinator, I had no authority to approve other employees working
17 out of classification or to initiate movement of employees to
18 another position in the same classification.

19 9. While I believed my employer was the SDCOE (Exhibit 4),
20 I have come to learn that my technical employer was Dr. Ward, in his
21 capacity as the Superintendent of Schools. I never met Dr. Ward
22 during my four years of employment by the SDCOE. He did not know
23 who I was other than maybe having seen me on campus. (Exhibit 6.)
24 I never participated in any meetings of any "management employees"
25 regarding the formulation of SDCOE or member district policies or
26 the administration of SDCOE or member district programs.

27 10. I did not have the power to hire or fire. My settlement
28 authority was limited to \$5,000, subject to approval by the member

1 districts.

2 11. I was not authorized to directly refer files to outside
3 counsel. I had no input into the selection of SDCOE JPA panel
4 counsel. I had no authority to retain outside coverage counsel at
5 SDCOE expense. There were at least three layers of superior
6 personnel in the chain of command above me, including in order Diane
7 Crosier, Lora Duzyk, and Michele Fort-Merrill. My only "management"
8 function was supervising claims adjuster Lisa Jensen, who would also
9 be classified as a "management employee" under the SDCOE's
10 definition, and a clerk/typist, and partial supervision/direction
11 of investigator John Vincent. There were no other "management"
12 functions of my job duties. (Exhibit 5.)

13 12. My first years of employment progressed satisfactorily.
14 I received a peer recognition award on March 3, 2004. (Exhibit 7.)
15 My first annual performance review was positive. (Exhibit 8.) My
16 second annual performance review was also positive. (Exhibit 9.)
17 As reflected in that review, I had begun looking for ways to reduce
18 our outside legal expense. (Id.)

19 13. On January 23, 2006, I advised my supervisor Diane Crosier
20 that I had an adult learning disability known as Visual Processing
21 Impairment which was impacting my work. (Exhibit 10.) However, I
22 was not offered a reasonable accommodation interactive process
23 meeting until six months later. (Exhibit 11.) As a result of that
24 process it was determined that appropriate accommodation would be
25 remedial training through Lindamood-Bell Training Center in Del Mar.
26 (Id.)

27 14. In my next performance review which immediately followed,
28 I was down-graded on issues that were related to my disability.

1 (Exhibit 12.) The SDCOE declined to pay for my accommodation
2 treatment. My own health insurance provider similarly declined to
3 pay for my treatment. The SDCOE's idea of accommodating my
4 disability was allowing me to use my own vacation and sick time to
5 obtain the remedial training at my own expense. (Exhibit 13.)

6 15. I was then stripped of my supervisory responsibilities.
7 (Exhibit 14.) Those responsibilities were never returned even after
8 I completed my remedial training on my own sick and vacation time
9 at my own expense. (Exhibits 15 and 16.)

10 16. I continued to receive letters of reprimand from Ms.
11 Crosier relating to performance issues during the period of my
12 disability and rehabilitation training. It became obvious to me
13 that, for reasons discussed in more detail below, Ms. Crosier was
14 intent on terminating my employment. I retained counsel to protect
15 my interests and place Ms. Crosier on notice of our position.
16 (Exhibit 17.)

17 17. A meeting was held with me, my counsel, Ms. Crosier, and
18 Ms. Fort-Merrill, on February 22, 2007. It was agreed that lines
19 of communication needed to be re-opened. It was agreed that my
20 supervisory responsibilities would be returned in phases. We agreed
21 that Ms. Crosier would provide me with clear directives on her
22 expectations with regard to the performance standards on my files.
23 (Exhibit 18.)

24 18. Instead, another letter of reprimand immediately followed.
25 (Exhibit 19.)

26 19. During the next several months, I continued to be
27 discriminated against through a failure to accommodate my
28 disability. My supervisory responsibilities were not returned. I

1 was excluded from meetings. I was ostracized within my department.
2 I was micro-managed and hyper-criticized.

3 20. This discrimination and failure to accommodate my
4 disability culminated in a negative performance review based on
5 issues that were directly related to my disability during the time
6 it was affecting my performance at work. (Exhibits 20 and 21.)
7 Although I attempted to respond in a positive manner (Exhibit 22),
8 my response was rebuffed and I was advised that my performance
9 issues were going to be characterized as insubordination. (Exhibit
10 23.)

11 21. I then advised Ms. Duzyk and Ms. Fort-Merrill that Ms.
12 Crosier's treatment of me was impacting my work and my health and
13 that I wished to file a workers' compensation claim. I further
14 advised them that I was filing complaints with the EEOC and the
15 DFEH. (Exhibit 24.)

16 22. Their response was to fire me. (Exhibit 25.)

17 23. Approximately two years previously, I had also begun to
18 analyze the legal costs we were incurring and to find ways to reduce
19 them. (Exhibit 9.) I began questioning the rotation of business
20 to and the billing practices of Mr. Shinoff's firm. (Exhibit 26.)
21 I was sternly rebuked and told that "Our method of assigning counsel
22 will not be changed." (Exhibit 27.) Immediately thereafter I
23 received a negative off-schedule performance review. (Exhibit 28.)
24 Even my subordinate investigator, John Vincent, telegraphed to me
25 that my days were numbered. (Exhibit 29.)

26 24. The other members of my department, Diane Crosier, Rick
27 Rinear, John Vincent, and Lisa Jensen had previously all worked
28 together at Ward North America when it was adjusting the JPA claims.

1 Mr. Shinoff had done the JPA work at that time as well. Ms. Crosier
2 had a longstanding friendship and business relationship with Mr.
3 Shinoff which dated back to the 1980's, and I knew that her first
4 job as an attorney after she passed the bar exam was working for Mr.
5 Shinoff's firm, before she went back into the insurance claims
6 business.

7 25. Discussions between Mr. Shinoff and my colleagues at
8 lunches for which Mr. Shinoff always paid also began to cause me
9 some concerns. It was during one of those lunches, for example,
10 that I learned that Mr. Shinoff was representing Ms. Crosier's son
11 in a personal legal matter in San Francisco. (Exhibit 32.) I also
12 knew that Mr. Shinoff was representing Mr. Rinear and his wife in
13 two separate matters. (Exhibits 30 and 31.)

14 26. I then discovered information for the tax year 2003-2204,
15 that JPA's total expenditures for legal expenses were \$2,882,863.44,
16 of which \$1,492,491.36 went to the Shinoff firm. That was
17 approximately 10 times higher than the amount paid to our other
18 panel firm of Winet, Patrick & Weaver, and approximately 50 times
19 more than the amount paid to our third panel counsel, Klinedinst,
20 Fliehman & McKillop. (Exhibit 33.)

21 27. This discovery gave me reason to believe that Mr.
22 Shinoff was receiving business or a disproportionate volume of
23 business based on personal relationships within our department
24 rather than on merit. I took my concerns to William Wood Merrill,
25 general counsel for the SDCOE. Mr. Merrill told me I needed to come
26 forward with my concerns or get "thrown under the bus." Mr. Merrill
27 should have referred the matter to the next higher authority in the
28 SDCOE or to the highest authority that could have acted on its

1 behalf, Dr. Ward. (Rules of Professional Conduct, Rule 3-
2 600(B)(2).) To my knowledge he did nothing.

3 28. I went to Lora Duzyk with my concerns. Ms. Duzyk was Ms.
4 Crosier's boss. I provided her with a copy of the 1099 report. I
5 told her the Shinoff firm was getting an unusually high percentage
6 of our work. I told her that the personal relationships within our
7 department and Mr. Shinoff raised conflict of interest issues and
8 constituted improper government business activities. I told her my
9 biggest concern was that our legal fees were not being properly
10 delegated among our panel counsel law firms and it could be a
11 possible violation of law. I further told her that I had overheard
12 Mr. Shinoff tell Rick Rinear that I should not be working for the
13 SDCOE anymore. (Exhibit 34.)

14 29. I also continued to report concerns regarding the Shinoff
15 firm's bills and billing practices to Ms. Crosier. (Exhibit 35.)
16 I continued to receive off-schedule performance reviews and
17 reprimands in return. (Exhibits 17, 18, 19.)

18 30. Ms. Duzyk did not get back to me for eight months. Her
19 investigation consisted of discussing the Shinoff billing issues
20 with Diane Crosier and Rick Rinear, the very people I implicated as
21 being corrupt. Her report back to me was dated August 8, 2007
22 (Exhibit 36), the same day I gave notice that the treatment I was
23 receiving from Ms. Crosier was impacting my work and my health, that
24 I was filing a workers' compensation claim, and that I was going to
25 the EEOC and DFEH (Exhibit 24). Nine days later, I was given notice
26 that Ms. Duzyk had recommended my dismissal. (Exhibit 25.)

27 31. While I was provided notice of the charges against me and
28 the documents upon which they were based, that record was

1 incomplete. It contained nothing about my disability or my
2 whistleblowing activities. (Exhibit 25.)

3 32. My attorneys immediately requested administrative review
4 of my proposed dismissal. (Exhibit 37.) Noted was the
5 incompleteness of the record and its absence of reference to my
6 disability discrimination or whistleblowing retaliation claims.
7 (Id.)

8 33. Amazingly, Mr. Merrill responded on behalf of the SDCOE,
9 even though I had initially gone to him with my whistleblowing
10 concerns. (Exhibit 38.) A preliminary disciplinary ("Skelly")
11 hearing was set for September 20, 2007. (Id.)

12 34. Although Mr. Merrill subsequently partially supplemented
13 the record in response to my counsel's request (Exhibit 39), there
14 was still nothing included regarding my disability discrimination
15 claim, or whistleblower activities. (Id.)

16 35. The Skelly hearing went forward on September 20, 2007, as
17 scheduled. Claudette Inge was the hearing officer. Mr. Merrill
18 appeared as general counsel for the SDCOE. It was not until the
19 close of the hearing, upon inquiry from my counsel, that Mr. Merrill
20 disclosed his marital relationship with Ms. Fort-Merrill, Executive
21 Director of Human Resources for the SDCOE and its disciplinary
22 authority. (Exhibit 25.)

23 36. On October 5, 2007, Dr. Ward provided me with my final
24 Notice of Discipline confirming my dismissal. (Exhibit 40.) That
25 same day, Ms. Fort-Merrill provided me with my Notice of Right of
26 Appeal. (Exhibit 41.) That same day, Mr. Merrill offered me the
27 opportunity to resign in exchange for two months of severance pay.
28 (Exhibit 42.)

1 37. That offer was rejected. On October 9, 2007, I filed my
2 Denial of Charges and Demand for Hearing. (Exhibit 43.) Mr.
3 Merrill then disappeared from the case. A replacement attorney from
4 his firm then notified me that the charges against me would be
5 amended to include additional bases for my termination. (Exhibit
6 44.)

7 38. On November 26, 2007, Ms. Fort-Merrill notified me of my
8 appeal hearing date from my first termination. (Exhibit 45.) That
9 same date, Ms. Fort-Merrill notified me that I was being fired
10 again, based on a supplemental performance audit of my files
11 performed by Pete McNulty of Carl Warren & Co. (Exhibit 46.) Not
12 coincidentally, Mr. McNulty used to work together with Ms. Crosier,
13 Mr. Rinear, Mr. Vincent, and Ms. Jensen at Ward North America when
14 Mr. Shinoff was their defense counsel for JPA claims.

15 39. On November 30, 2007, my attorneys wrote to Ms. Fort-
16 Merrill challenging the fairness and impartiality of the first
17 Skelly hearing. Issues were raised regarding the incomplete record
18 provided by her to the hearing officer, my whistleblowing
19 retaliation claims, and her husband's conflict of interest, as well
20 as my disability discrimination claims. (Exhibit 47.)

21 40. On December 7, 2007, my attorneys wrote to the SDCOE
22 Personnel Commission regarding the entirety of the issues I knew
23 about at the time regarding my termination and my claims of
24 disability discrimination and whistleblower retaliation. Included
25 were requests for subpoenas for information regarding additional
26 corruption issues which I had subsequently discovered, including the
27 Winet firm's representation of Ms. Crosier in her own personal
28 injury lawsuit, additional improper personal relationships between

1 Mr. Shinoff and Mr. Vincent, issues regarding the Winet firm's
2 employment of Lisa Jensen's husband Chris Jensen and the referral
3 of legal business to Mr. Merrill's firm by Ms. Fort-Merrill or at
4 her recommendation. (Exhibit 48.) This letter was copied to Dr.
5 Ward. (Id.) Dr. Ward testified in my subsequent appeal hearing
6 that he never read the letter, and that it would have been forwarded
7 by him to Ms. Fort-Merrill. (Exhibit 6.) It was further obvious
8 to me at the time this letter was introduced into evidence at my
9 appeal hearing on June 13, 2008, that based on their facial
10 expressions, the members of the Personnel Commission had never seen
11 the letter either. Ms. Fort-Merrill is responsible for coordinating
12 the activities of the Personnel Commission, the members of which do
13 not maintain offices on campus at the SDCOE, to which the letter was
14 addressed.

15 41. My own further investigation has revealed that since the
16 time Ms. Fort-Merrill was promoted to Executive Director of Human
17 Relations for the SDCOE, her husband's firm's volume of business
18 received from the SDCOE approximately doubled, from approximately
19 \$150,000 per year to approximately \$300,000 per year. My request
20 for documentation of this information is the subject of a pending
21 Public Records Act request.

22 42. Dr. Ward further testified at my appeal hearing that Ms.
23 Fort-Merrill recommended the retention of her husband as general
24 counsel by the SDCOE, which Dr. Ward approved. (Exhibit 6.)

25 43. The adverse employment actions taken against me because
26 of my disability and my whistleblowing activities caused me to
27 suffer severe emotional distress. I filed a workers' compensation
28 claim which my employer(s) denied. As part of that process, I

1 received a Panel Qualified Medical Evaluation which confirmed that
2 I had suffered severe emotional distress with physical symptoms as
3 a result of the adverse employment actions taken against me.
4 (Exhibit 49.) I also filed complaints with the EEOC and DFEH, both
5 of which issued me right to sue letters. I filed a claim against
6 the SDCOE which was rejected. Finally, before proceeding under Ed.
7 Code § 44110 et seq., I filed a verified written complaint with the
8 local law enforcement agency, the San Diego County District
9 Attorney's office. (Exhibit 50.)

10 44. I was fired for dishonesty, incompetence, and
11 insubordination. My civil action is not based on any claim of
12 defamation or other written or oral statements made by any defendant
13 in connection with my pretextual termination on those grounds.
14 Rather, the basis of my complaint is the subtext for my termination,
15 which was disability discrimination and whistleblower retaliation.

16 45. My employer failed to accommodate and discriminated
17 against me after I reported I had a learning disability which
18 affected my work by giving me negative performance reviews,
19 stripping me of supervisory responsibilities, excluding me from
20 meetings, ostracizing me in the workplace, and engaging in
21 micromanagement and hypercriticism of my daily activities. My
22 employer(s) further failed to accommodate my disability by requiring
23 me to undergo rehabilitation training on my own vacation and sick
24 time at my own expense after unreasonably delaying their evaluation
25 of my disability claim. When I complained about this treatment, I
26 was terminated.

27 46. I discovered and reported a culture of corruption within
28 my department involving conflicts of interest and interpersonal

1 relationships resulting in referral of our department's legal
2 business and that of the SDCOE to friends and spouses of government
3 employees. In return, I was intimidated, threatened, coerced, and
4 commanded for the purpose of interfering with my right to disclose
5 this culture of corruption all the way up the chain of command to
6 and including Dr. Ward and the Personnel Commission.

7 47. Lora Duzyk purported to investigate my whistleblowing
8 concerns by disclosing my identity and those concerns to two of the
9 people I had accused of corruption. Lora Duzyk never made any
10 attempts to perform an investigation of my whistleblowing concerns
11 beyond speaking with the people I had accused of corruption. Lora
12 Duzyk acted in concert with those corrupted individuals by
13 ultimately recommending my termination on pretextual grounds
14 provided to her by my primary accuser, Diane Crosier.

15 48. Michele Fort-Merrill acted in concert with the people I
16 had accused of corruption and Lora Duzyk by orchestrating my
17 termination (twice) on pretextual grounds because I had further
18 discovered, exposed, and reported what I reasonably believed to be
19 conflicts of interest in her husband acting as general counsel for
20 the SDCOE, particularly with respect to my termination proceedings,
21 which Ms. Fort-Merrill directly implemented. Ms. Fort-Merrill
22 suppressed my counsel's letter to her of November 30, 2007, from Dr.
23 Ward, and further suppressed my counsel's letter of December 7,
24 2007, from the Personnel Commission, and from Dr. Ward as well.
25 (Exhibits 47 and 48.) Ms. Fort-Merrill orchestrated, implemented,
26 and authorized the termination of my employment (twice) in an effort
27 to conceal her financial interest in the legal business received by
28 her husband from the SDCOE at her recommendation.

1 49. Mr. Merrill's, Mr. Winet's, and Mr. Shinoff's firms
2 continue to receive hundreds of thousands if not millions of dollars
3 of business a year from the SDCOE and/or the JPA based on their
4 marital relationships, interpersonal relationships, and friendships
5 with the individual named defendants in my lawsuit. My governmental
6 employment and eligibility for retirement benefits were terminated
7 and that termination has continued to be reaffirmed after I
8 attempted to report my concerns in those regards to my employer(s).
9 As a result of my termination, I have been rendered unemployed since
10 October 5, 2007, which has caused me to lose income and benefits in
11 excess of \$100,000. It was my intent to continue in my public
12 employment at a minimum until August 11, 2013, when I would have
13 vested in CalPERS with 10 years of service credit. Due to my
14 wrongful termination I have suffered additional lost future wages
15 and benefits, including retirement benefits, in excess of \$1
16 million.

17 50. I remain unemployed and unemployable because of my
18 pretextual termination for dishonesty, incompetence, and
19 insubordination, which I must disclose to all future prospective
20 employers. I have continued to apply for new jobs in the insurance
21 claims industry without success. I am 61 years old and my mental
22 and physical health have continued to suffer as a result of
23 everything that has happened to me at the SDCOE.

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 23, 2008, at San Diego, California.



RODGER J. HARTNETT