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LYNN SOLOWAY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LYNN SOLOWAY

Plaintiff

vs.

COUNTY OF CONTRA COSTA,
CALIFORNIA, a government entity,

Defendant

Case No.: 4:20-cv-02287-JSW

FIRST AMENDED COMPLAINT

- 1. VIOLATION OF THE CALIFORNIA WHISTLEBLOWER PROTECTION ACT (Labor Code § 1102.5);**
- 2. VIOLATION OF U.S. CONSTITUTION, FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH (42 U.S.C. § 1983); and**
- 3. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT (Labor Code §§ 2698 *et seq.*)**

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1
2 1. This case arises out of the retaliatory and illegal actions taken by defendant County of
3 Contra Costa, California (“CONTRA COSTA COUNTY”) against plaintiff Lynn Soloway (“MS.
4 SOLOWAY”).

5 2. MS. SOLOWAY exercised her First Amendment rights and engaged in protected
6 activity when she blew the whistle on CONTRA COSTA COUNTY’s numerous illegal workplace
7 practices.

8 3. MS. SOLOWAY brings this action against CONTRA COSTA COUNTY alleging the
9 following claims: 1) Whistleblower Retaliation; 2) Violation of the U.S. Constitution, First
10 Amendment Right to Freedom of Speech; and 3) Violation of the Private Attorneys General Act
11 (“PAGA”).

II. PARTIES

12
13 4. At all relevant times MS. SOLOWAY was a resident of Contra Costa County,
14 California.

15 5. CONTRA COSTA COUNTY is a governmental entity, duly organized and existing
16 under the laws of the State of California.

III. JURISDICTION AND VENUE

17
18 6. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C.
19 section 1331.

20 7. In addition, this Court has supplemental jurisdiction under 28 U.S.C. section 1367
21 over MS. SOLOWAY’s state law claims because those claims derive from a common nucleus of
22 operative fact.

23 8. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C.
24 sections 2201 and 2202.

25 9. Venue is proper in the Northern District of California under 28 U.S.C. section
26 1391(b) because CONTRA COSTA COUNTY is located in this District and all of the acts and/or
27 omissions complained of herein have occurred in this District.

Intradistrict Assignment

10. Intradistrict assignment to the Oakland or San Francisco Division is proper pursuant to Local Rule 3-2(d) because a substantial part of the events giving rise to this action occurred in Contra Costa County.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

11. On October 4, 2019, MS. SOLOWAY timely filed a claim for damages pursuant to the California Government Code tort claims presentation requirements.

12. Upon information and belief, CONTRA COSTA COUNTY rejected MS. SOLOWAY's tort claim on November 5, 2019.

13. Pursuant to Labor Code section 2699.3(a)(1), on April 6, 2020, MS. SOLOWAY gave electronic and written notice by certified mail of CONTRA COSTA COUNTY's violations of the California Labor Code as alleged in this Complaint to the Labor Workforce and Development Agency ("LWDA") and CONTRA COSTA COUNTY.

14. The LWDA has not provided notice pursuant to Labor Code section 2699.3(a)(2)(A) and 65 calendar days have passed since the postmark date of MS. SOLOWAY's LWDA notice. Therefore, MS. SOLOWAY is entitled to commence a civil action pursuant to Labor Code section 2699(a)(2)(C),

V. STATEMENT OF THE CASE

15. MS. SOLOWAY has dedicated her entire professional career, spanning more than 30 years, to serving patients and the community at large within the health care field.

16. For more than a decade MS. SOLOWAY was an exemplary and dedicated employee of CONTRA COSTA COUNTY. Starting in September 2005, MS. SOLOWAY worked for the Contra Costa Medical Center as an outpatient nurse (per diem) until June 2007. In June 2007, MS. SOLOWAY transitioned to work for the Contra Costa Health Plan ("CCHP") as a Utilization Reviewer. After approximately one year in that role she became a nurse (per diem) on nights and weekends.

1 17. The CCHP is a division operating under Contra Costa Health Services (“CCHS”).
2 CCHS is a department of CONTRA COSTA COUNTY.

3 18. In early 2018, the CCHP terminated its existing Utilization Management (“UM”)
4 Director. Soon thereafter, Patricia Tanquary, who was then CEO of the CCHP, asked MS.
5 SOLOWAY to apply for and consider a full-time position as the UM Director. MS. SOLOWAY
6 applied for and was offered the UM Director position.

7 19. MS. SOLOWAY formally began her role as UM Director on October 8, 2018.

8 20. Over the next six months, her supervisor, Medical Director Dr. Jose Yasul, her
9 employees, and her peers, all gave her oral commendations for her aptitude and hard work. At no
10 time during her tenure as UM Director, or in any role working for CONTRA COSTA COUNTY, did
11 MS. SOLOWAY receive any written notice of corrective action or counseling.

12 21. On or about December of 2018, Ms. Tanquary left her role as CEO of the CCHP.
13 After a brief period as acting CEO, Sharron Mackey became the CEO of CCHP on or about January
14 of 2019. In her capacity as CEO of the CCHP, Ms. Mackey had final decision-making authority for
15 the CCHP, including, but not limited to, supervising employees, making employment-related
16 decisions, setting practices, oversight of the CCHP system, and ensuring the implementation of
17 practices and procedures in compliance with applicable laws, policies, regulations, and guidelines.

18 22. Starting in or about February 2019, and continuing until April 8, 2019, MS.
19 SOLOWAY reported multiple violations of law, regulations, and policies committed by the CCHP.

20 23. For each of the complaints reported by MS. SOLOWAY, MS. SOLOWAY believed
21 that CONTRA COSTA COUNTY and its agents were knowingly and repeatedly violating state and
22 federal laws and regulations.

23 24. MS. SOLOWAY complained about CONTRA COSTA COUNTY’s violations of the
24 Knox-Keene Health Care Service Plan Act of 1975 (“Knox-Keene Act”). The Knox-Keene Act and
25 accompanying laws regulate managed health care plans to ensure basic service and protections for
26 consumers.

27
28

1 25. MS. SOLOWAY complained about the following violations of the Knox-Keene Act,
2 among others:

- 3 a. That the CCHP was improperly handling grievances;
4 b. That the CCHP was taking longer than 30 days for medical determination in
5 responding to appeals; and
6 c. That the CCHP's written policy to members and providers gave providers 365 days
7 for appeals, but in practice the CCHP only gave providers 180 days by claiming that
8 appeals were retrospective review submissions, and denying appeals older than 180
9 days.

10 26. MS. SOLOWAY made her complaints both orally and in writing to many different
11 people. For example, she reported CONTRA COSTA COUNTY's violations of law to Ms. Mackey.
12 She also reported them to Dr. Yasul, Medical Director; Alycia Rubio, Manager of the Claims
13 Department; Sylvia Rodriguez, Supervisor of the Claims Department; and Francis ("Frank") Lee,
14 Compliance Officer.

15 27. Additionally, in a March 27, 2019, email to Ms. Mackey, Ms. Rubio, and Ms.
16 Rodriguez, MS. SOLOWAY wrote, in part: "I am concern[ed] about the state regulations and not
17 being compliant with our UM policies on the appealing process."

18 28. MS. SOLOWAY's complaints were effectively ignored by CONTRA COSTA
19 COUNTY and its agents.

20 29. After MS. SOLOWAY reported CONTRA COSTA COUNTY's illegal conduct, Ms.
21 Mackey began to exhibit anger and erratic behavior toward MS. SOLOWAY.

22 30. In February and March 2019, the CCHP was preparing for onsite visits from
23 government regulators from the Department of Managed Health Care ("DMHC") and the
24 Department of Health Care Services ("DHCS"). The DMHC is the state regulatory body primarily
25 responsible for overseeing the CCHP. The DHCS is responsible for, among other things, funding
26 health care services for Medi-Cal beneficiaries, managing the Medi-Cal program, and overseeing
27 and regulating the activities of Medi-Cal health plans in California.

1 31. In anticipation of her upcoming meetings with government regulators, MS.
2 SOLOWAY met with Compliance Officer Lee several times to confirm and report violations of the
3 Knox-Keene Act.

4 32. For example, on or about March 21, 2019, MS. SOLOWAY informed Compliance
5 Officer Lee that she had been very stressed about CONTRA COSTA COUNTY's illegal conduct,
6 and had lost sleep over the fact that regulators were coming onsite and that she would have to detail
7 CONTRA COSTA COUNTY's numerous violations of the law to the regulators. MS. SOLOWAY
8 asked Compliance Officer Lee if he could attend a meeting with her and the Claims Manager to
9 clarify the Knox-Keene Act's requirements for issuing denial letters and the logging and tracking of
10 such denials.

11 33. Compliance Officer Lee responded by admitting that, "we are doing it all wrong," but
12 stated that he was afraid of Ms. Mackey. He further stated that he had tried to meet with Ms. Mackey
13 regarding the violations of law raised by MS. SOLOWAY, but that Ms. Mackey did not want to talk
14 to him about it.

15 34. Compliance Officer Lee then stated that he wanted to attend a meeting with MS.
16 SOLOWAY and the Claims Manager. However, he would not participate unless he had approval
17 from Ms. Mackey.

18 35. MS. SOLOWAY asked Compliance Officer Lee what she should say to the
19 regulators. Compliance Officer Lee told her, "let's hope they don't ask." MS. SOLOWAY
20 responded that she would tell the regulators the truth regarding CONTRA COSTA COUNTY's
21 violations of law.

22 36. On or about March 28, 2019, MS. SOLOWAY participated in a meeting regarding
23 the appeals, grievances, and dispute procedures. MS. SOLOWAY pointed out that the CCHP was
24 providing incorrect information about the appeals process in terms of the deadline for filing appeals.
25 MS. SOLOWAY then called Compliance Officer Lee, who confirmed that MS. SOLOWAY was
26 correct.

1 37. Ms. Mackey was visibly upset and angry that MS. SOLOWAY had made that call. In
2 a raised voice she scolded MS. SOLOWAY, saying, “I didn’t ask Frank [Compliance Officer Lee] to
3 be in this meeting!”

4 38. Ms. Mackey continued to intimidate MS. SOLOWAY thereafter. On or about April 1,
5 2019, Ms. Mackey saw a copy of the Knox-Keene Act (AB 1455) on MS. SOLOWAY’s desk and
6 immediately confronted MS. SOLOWAY. In an irritated and angry tone, Ms. Mackey scolded MS.
7 SOLOWAY, telling her that she should not be looking at the Knox-Keene Act because “it ha[d]
8 nothing to do with [her].”

9 39. MS. SOLOWAY was scheduled to meet with government regulators during the
10 weeks of April 8, 2019, and April 15, 2019, for the anticipated audit. On Monday, April 8, 2019,
11 MS. SOLOWAY spent hours in large group introductory presentations with the regulators who were
12 onsite. These meetings preceded smaller breakout meetings wherein MS. SOLOWAY was
13 scheduled to be interviewed specifically about utilization management issues.

14 40. Ms. Mackey was aware of MS. SOLOWAY’s scheduled meetings and knew that MS.
15 SOLOWAY would report CONTRA COSTA COUNTY’s illegal conduct.

16 41. On April 8, 2019, on the eve of MS. SOLOWAY’s scheduled face-to-face meetings
17 with regulators, Ms. Mackey abruptly terminated her.

18 42. Despite the fact that MS. SOLOWAY had passed her probationary period and should
19 have been classified as permanent, CONTRA COSTA COUNTY treated her as though she was a
20 probationary employee and terminated her without cause.

21 43. Following her termination, MS. SOLOWAY asked Ms. Mackey and the COUNTY’s
22 HR Director multiple times via e-mail how to obtain reinstatement to her previously held position.
23 Neither Ms. Mackey nor the HR Director replied to MS. SOLOWAY’s multiple/repeated requests.

24 44. MS. SOLOWAY’s termination came as a complete surprise to her, as she had never
25 received any notice of corrective action or written warnings of performance problems. MS.
26 SOLOWAY’s direct supervisor, Dr. Yasul, also expressed shock at MS. SOLOWAY’s dismissal.

VI. CAUSES OF ACTION

**FIRST CAUSE OF ACTION
WHISTLEBLOWER RETALIATION
(Labor Code § 1102.5)**

45. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference.

46. Labor Code section 1102.5(b), prohibits an employer, or any person acting on behalf of the employer, from retaliating against an employee “for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.”

47. MS. SOLOWAY reasonably believed that CONTRA COSTA COUNTY was in violation of, and in noncompliance with, state and federal statutes, rules, and regulations.

48. MS. SOLOWAY disclosed violations of and noncompliance with state and federal statutes, rules, and regulations to a person with authority over her and to other employees who had the authority to investigate, discover, or correct the violation or noncompliance.

49. CONTRA COSTA COUNTY believed that MS. SOLOWAY had disclosed or might disclose violations of and noncompliance with state and federal statutes, rules, and regulations to a person with authority over her and to another employee who had the authority to investigate, discover, or correct the violation or noncompliance.

50. CONTRA COSTA COUNTY terminated MS. SOLOWAY because she disclosed, or might disclose violations of state or federal statutes, rules, or regulations.

51. As a proximate result of CONTRA COSTA COUNTY’s actions, MS. SOLOWAY has suffered actual, consequential and incidental financial losses, including without limitation, loss

1 of salary and benefits, and the intangible loss of employment related opportunities in her field and
2 damage to her professional reputation, all in an amount subject to proof at the time of trial.

3 52. As a proximate result of the wrongful acts of CONTRA COSTA COUNTY, MS.
4 SOLOWAY has suffered and continues to suffer emotional distress, humiliation, mental anguish and
5 embarrassment, all in an amount subject to proof at the time of trial.

6 WHEREFORE, MS. SOLOWAY prays for judgment against CONTRA COSTA COUNTY
7 as set forth below.

8 **SECOND CAUSE OF ACTION**
9 **VIOLATION OF THE U.S. CONSTITUTION, FIRST AMENDMENT**
10 **(42 U.S.C. § 1983)**

11 53. The allegations of each of the preceding paragraphs are realleged and incorporated
12 herein by reference.

13 54. Starting in or about February 2019, and continuing until April 8, 2019, MS.
14 SOLOWAY exercised her First Amendment right to freedom of speech by speaking out on matters
15 of public concern, including violations of various federal and state laws.

16 55. At all relevant times, Ms. Mackey was a policymaker. Ms. Mackey made the decision
17 to terminate MS. SOLOWAY.

18 56. In the alternative, the decision to terminate MS. SOLOWAY was made by CONTRA
19 COSTA COUNTY's policymaker, and/or ratified by CONTRA COSTA COUNTY's policymaker.

20 57. The decision to terminate MS. SOLOWAY was in retaliation for MS. SOLOWAY
21 exercising her First Amendment right to freedom of speech.

22 58. At the time that MS. SOLOWAY exercised her First Amendment right to freedom of
23 speech, she spoke regarding a matter of public concern.

24 59. At the time that MS. SOLOWAY exercised her First Amendment right to freedom of
25 speech, she spoke as a private citizen, and not as a public employee. Specifically, it was not MS.
26 SOLOWAY's official duty to report these violations of federal and state laws. Nor was it part of the
27 tasks that she was paid to perform.
28

1 60. MS. SOLOWAY's exercising of her First Amendment right to freedom of speech
2 was a substantial or motivating factor in her termination.

3 61. CONTRA COSTA COUNTY had no adequate justification for treating MS.
4 SOLOWAY differently than other members of the public.

5 62. CONTRA COSTA COUNTY would not have terminated MS. SOLOWAY absent
6 MS. SOLOWAY exercising her First Amendment right to freedom of speech.

7 63. CONTRA COSTA COUNTY's adverse action against MS. SOLOWAY was a direct
8 response to and was intended to retaliate against MS. SOLOWAY for her exercise of her free speech
9 rights on matters of public concern. CONTRA COSTA COUNTY's adverse retaliatory actions
10 against MS. SOLOWAY thus violated her constitutional rights under the First Amendment to the
11 U.S. Constitution, as enforced through 42 U.S.C. section 1983.

12 64. As an actual and proximate result of the aforementioned violations, MS. SOLOWAY
13 has been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of
14 this Court.

15 WHEREFORE, MS. SOLOWAY prays for judgment against CONTRA COSTA COUNTY
16 as set forth below.

17 **THIRD CAUSE OF ACTION**
18 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**
19 **(Labor Code § 2698, et seq.)**

20 65. The allegations of each of the preceding paragraphs are realleged and incorporated
21 herein by reference.

22 66. From April 6, 2020 continuing to the present ("PAGA liability period"), CONTRA
23 COSTA COUNTY has violated Labor Code section 1102.5 as alleged herein. MS. SOLOWAY is an
24 aggrieved employee, in that MS. SOLOWAY was employed by CONTRA COSTA COUNTY and
25 was retaliated against in violation of California Labor Code section 1102.5, as alleged herein. A
26 violation of California Labor Code section 1102.5 gives rise to a private right of action under PAGA.

27 67. MS. SOLOWAY, on behalf of herself and other employees presently or formerly
28 employed by CONTRA COSTA COUNTY during the PAGA liability period brings this

1 representative action pursuant to Labor Code section 2699, et. seq. seeking civil penalties for
2 CONTRA COSTA COUNTY's violations of California Labor Code section 1102.5 as provided
3 under Labor Code section 2699(f). MS. SOLOWAY also seeks reasonable attorney's fees and costs.

4 68. MS. SOLOWAY complied with the PAGA notice provision to the LWDA as set forth
5 in California Labor Code section 2699.3. Accordingly, MS. SOLOWAY properly exhausted all
6 administrative remedies.

7 69. For each violation, MS. SOLOWAY and all other aggrieved employees are entitled to
8 penalties in an amount to be proven at trial.

9 70. Such penalties will be allocated seventy five percent (75%) to the LWDA and twenty
10 five percent (25%) to MS. SOLOWAY and all other aggrieved employees.

11 WHEREFORE, MS. SOLOWAY prays for judgment against CONTRA COSTA COUNTY
12 as set forth below.

13 **VII. DAMAGES**

14 1. As a proximate result of the conduct of CONTRA COSTA COUNTY, MS.
15 SOLOWAY has suffered and continues to suffer economic loss.

16 2. As a further proximate result of the conduct of CONTRA COSTA COUNTY, MS.
17 SOLOWAY has suffered and continues to suffer emotional and mental distress, fear, anxiety,
18 humiliation and embarrassment.

19 3. MS. SOLOWAY was required to retain private counsel to vindicate her rights under
20 the law. MS. SOLOWAY is therefore entitled to an award of all attorneys' fees incurred in relation
21 to this action for violation of her rights.

22 4. WHEREFORE, MS. SOLOWAY requests relief from CONTRA COSTA COUNTY
23 as follows:

- 24 a. Reinstatement;
- 25 b. Loss of earnings, and back pay including any increased tax liability thereon;
- 26 c. Loss of future earnings, promotions, opportunities to promote, front pay, and all other
27 employment benefits such as pension rights;
- 28

- d. Lost fringe benefits, including but not limited to vacation, sick days, and retirement contributions;
- e. Medical, hospital and psychological bills, including past, present and future bills;
- f. Job search expenses and out of pocket costs;
- g. Compensatory damages for lost past and future wages, earnings, and benefits, according to proof;
- h. General damages for humiliation, mental anguish and emotional distress, according to proof;
- i. Civil penalties, according to proof;
- j. Consequential damages, according to proof;
- k. Actual damages, according to proof;
- l. Declaratory relief;
- m. Reasonable attorneys' fees for reasons including, but not limited to, conveying a significant public benefit, pursuant to California Code of Civil Procedure section 1021.5 and California Labor Code section 2699(g)(1) according to proof;
- n. Reasonable costs, according to proof;
- o. Interest; and
- p. All such other and further relief as the Court may deem just and proper.

Dated: June 11, 2020

HUNTER PYLE LAW

By: 

Hunter Pyle

Attorneys for Plaintiff
LYNN SOLOWAY

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

Dated: June 11, 2020

HUNTER PYLE LAW

By:  _____

Hunter Pyle

Attorneys for Plaintiff
LYNN SOLOWAY