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**TONETTE SMART**

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**01/29/2018** at 09:48:33 AM  
Clerk of the Superior Court  
By Isia Vazquez, Deputy Clerk

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

7 **COUNTY OF ORANGE**

8 TONETTE SMART, an individual,

9  
10 Plaintiff,

11 vs.

12 COUNTY OF ORANGE, a municipal  
13 corporation; ERIC WOOLERY, an individual;  
and DOES 1-50 inclusive,

14 Defendants.  
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CASE NO.: 30-2018-00989802-CU-OE-CJC

Judge Frederick P. Horn

**COMPLAINT FOR DAMAGES:**

1. Statutory Violation of Labor Code § 1102.5 (Whistleblower Retaliation); and
2. Intentional Infliction of Emotional Distress

**REQUEST FOR JURY TRIAL**

I.

INTRODUCTION

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3 1. This is a classic whistleblower case brought pursuant to California Labor Code §  
4 1102.5, subdivisions (b) and (c) made more egregious because the illegal actions were being carried  
5 out by Eric Woolery, Orange County’s elected Auditor Controller. Specifically, on October 25, 2017  
6 Tonette Smart was suspended from her position as the Director of Internal Audit after she complained  
7 and refused to participate in certain illegal activity carried out by Mr. Woolery. The pretext provided  
8 by the County for her suspension is that after 15 years of loyal reprimand free service to the County,  
9 she was being investigated for her alleged misconduct at work (utilizing work time to perform  
10 personal tasks). Ultimately, on January 19, 2018, Plaintiff’s employment was terminated.

11 2. Approximately one month before her suspension, Plaintiff learned that Mr. Woolery  
12 secretly disclosed confidential County of Orange information to the Voice of OC (a local newspaper),  
13 sensitive confidential information that identifies certain weaknesses in the County’s IT system which  
14 could result in the compromise of the County’s computer systems.

15 3. In August of 2017, Plaintiff also voiced her concerns verbally and in writing to  
16 County officials that Mr. Woolery (the self-proclaimed taxpayer watchdog) was using County  
17 taxpayer resources to perform personal family services such as County staff supervising his two  
18 young children when they were in the office (especially during the summer) and instructing County  
19 employees to taxi his children to and from school, dance class, and other extracurricular activities  
20 during the work day.

21 4. Plaintiff also verbally complained to other managers about Mr. Woolery’s unethical  
22 and potentially illegal political activity.

23 5. Finally, Plaintiff seeks damages for intentional infliction of emotional distress  
24 because of the mental and physical manifestations she has suffered as a result of the County and Mr.  
25 Woolery’s conduct.

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**II.**  
**PARTIES**

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3           6.       Plaintiff TONETTE SMART (“Plaintiff” or “TONETTE”) is, and at all times  
4 mentioned herein, was a resident of the County of Orange, and was a citizen of the State of California.  
5 From 2002 until January 19, 2018, Plaintiff was an employee of the County of Orange - her last  
6 position held was as the Director of Internal Audit. Throughout her employment, Plaintiff was a  
7 loyal and devoted employee whose work performance has been exceptional evidenced by the receipt  
8 of 3 promotions in the last 5 years.

9           7.       Plaintiff is informed and believes, and thereon alleges that Defendant COUNTY is a  
10 municipal corporation existing under the laws of the State of California and is a General Law City  
11 as defined by Government Code § 36501. From 2002 through January 19, 2018, Plaintiff was  
12 employed by Defendant, the COUNTY OF ORANGE (“COUNTY”).

13           8.       Defendant, Eric Woolery (“WOOLERY”), is, and at all times mentioned herein was,  
14 an individual residing in the County of Orange, and is a citizen of the State of California. At all  
15 relevant times, Defendant, WOOLERY was acting within the course and scope of his employment  
16 with Defendant COUNTY and is considered a “manager, officer, agent and employee” of COUNTY  
17 for purposes of California Labor Code § 1104. Presently WOOLERY is the elected Auditor  
18 Controller for the COUNTY and was Plaintiff’s direct Supervisor. WOOLERY is also a licensed  
19 Certified Public Accountant with the State of California.

20           9.       The true names and capacities of the Defendants sued herein as DOES 1 through 50,  
21 inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names.  
22 Plaintiff will ask leave of the Court to amend this Complaint to show their true names and capacities  
23 when same have been ascertained. Plaintiff is informed and believes, and thereon alleges, that each  
24 of the Defendants, herein designated as a DOE, proximately caused the injuries and damages to  
25 Plaintiff as hereinafter alleged.

26           10.       Plaintiff is informed and believes, and thereon alleges, that each of the Defendants  
27 designated herein as a DOE is legally responsible in some manner for the events and happenings  
28 herein referred to, proximately caused the injuries and damages thereby to Plaintiff as herein alleged.



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V.

**FACTUAL BACKGROUND**

**A. HISTORY OF PLAINTIFF'S EMPLOYMENT WITH COUNTY**

18. In or around November of 2002, Plaintiff was hired by the COUNTY as a Senior Auditor/Accountant. Plaintiff has always been a superior performer earning several promotions within the following classifications: Administrative Manager I, Administrative Manager II, and Administrative Manager III. Plaintiff's last job title was Director of Internal Audit.

19. In June of 2014, WOOLERY was elected as the COUNTY's Auditor-Controller, was sworn into office on January 5, 2015, and thereafter assumed control of the Auditor-Controller office supervising Plaintiff.

20. In or around October of 2015, WOOLERY threatened Plaintiff when he came into her office, stating "if you do anything behind my back I will take you to the woodshed." WOOLERY made it clear to Plaintiff that he expected blind loyalty at all costs. On one occasion, WOOLERY told Plaintiff that he wants "people in the office to fear him" and referred to himself as the "Honey Badger" even recommending during a conversation that Plaintiff watch a video about the Honey Badger so she can witness how ruthless these animals are. Essentially, WOOLERY demanded blind loyalty from his staff at all costs.

**B. CEO/IT GENERAL CONTROL AUDIT**

21. In or around October of 2016, Plaintiff was tasked with performing a County Executive Office/OC Information Technology ("CEO/IT") General Control audit for the 2016 year ending December 31, 2016 (hereinafter the "Audit"). The objectives of the audit was to 1) Ensure physical and logical security to data and programs is appropriate, approved, managed, maintained, and adequately supported; 2) Ensure change management and system development life cycle processes are appropriate, approved, and adequately supported; 3) Ensure computer operations are appropriately, adequately and effectively managed to ensure timely and proper continuation of system processing; and 4) Review Orange County Information Technology implementation of selected components of the IT governance model and recommend improvements.

1           22.     On August 21, 2017, the full version of the pre-draft report of the Audit was  
2 distributed by Plaintiff's Division to limited individuals advising that "this is the full version of the  
3 report including sensitive information that should only be shared with authorized individuals." The  
4 recipients were instructed to review the pre-draft report and advise of any changes by September 5,  
5 2017. The Audit was stamped "CONFIDENTIAL PRE-DRAFT REPORT – NOT FOR PUBLIC  
6 DISTRIBUTION" on every page because information contained in the unredacted version of the  
7 report contained sensitive information concerning the COUNTY's IT system which if known by the  
8 general public may result in a breach of the COUNTY system.

9           23.     On August 21, 2017, Plaintiff emailed WOOLERY a copy of the Audit advising him  
10 that the final report would be issued in November or December of 2017, which provides CEO/IT 60  
11 days to provide a formal response to the draft Audit

12           24.     On or about August 23, 2017, Plaintiff learned that WOOLERY warned the Auditor-  
13 Controller Information Technology Director, Phil Daigneau, that WOOLERY would leak the Audit  
14 to make the CEO/IT look bad if he did not get the 5 votes necessary from the Board of Supervisors  
15 for his own IT project.

16           25.     On or about August 31, 2017 at 6:00 a.m. Plaintiff received an email from Michael  
17 Dean from the Internal Audit Division informing her that a story concerning the confidential Audit  
18 was in the newspaper. Plaintiff confirmed with Danielle Katz that the Voice of OC received an  
19 unredacted version of the Audit from a "confidential" source. That same day, Plaintiff emailed her  
20 team advising that "this could result in the audit division losing credibility with County departments."  
21 WOOLERY responded agreeing that no one should comment on an audit report until it is issued.

22           26.     On August 31, 2017, Plaintiff emailed her department advising that "[S]omeone  
23 leaked an extremely confidential pre-draft report to the press. This exposes the county." In response,  
24 Kathy Tavoularis responded that "Hilda addressed confidentiality with HR issues at last Tuesday's  
25 Executive Meeting. She was very clear there would be consequences if information was  
26 inappropriately communicated with other staff." WOOLERY was cc'd on that email.

1           27.     On or about September 6, 2017, HR Manager, Ms. Garcia instructed Plaintiff to close  
2 her door and in a private meeting informed Plaintiff she was under investigation for the  
3 “circumstances surrounding the report breach.”

4           28.     On October 16, 2017, Plaintiff received a memorandum from Ms. Garcia that an  
5 investigation was being conducted regarding Plaintiff’s alleged conduct at work and use of County  
6 Resources for personal reasons.

7           29.     On October 25, 2017, Plaintiff was required to attend an investigatory meeting where  
8 she was confronted by Danielle Katz with an allegation of misconduct and using a COUNTY email  
9 for personal use. Never once in her 15 years of loyal service to the COUNTY has Plaintiff ever been  
10 accused of any such conduct.

11           30.     On November 3, 2017, Plaintiff sent an email to Ms. Garcia and WOOLERY stating  
12 “Eric I know that you are attempting to terminate my employment with the County of Orange  
13 Auditor-Controller’s office in retaliation regarding the leak of the confidential CEO IT pre-draft  
14 report to the press. You know you leaked it and I know you did.”

15           31.     Neither Ms. Garcia nor WOOLERY responded to Plaintiff’s November 3, 2017  
16 email.

17           **C.     MISUSE OF PUBLIC FUNDS**

18           32.     In addition to the above claims, on or about August 21, 2017, Plaintiff raised concerns  
19 with the COUNTY about WOOLERY using COUNTY resources to care for his two young children.  
20 Specifically, WOOLERY regularly brought his children into the office and used COUNTY employee  
21 time to supervise his children. He also regularly instructed Danielle Katz and other staff members  
22 to pick his children up at school and take them to dance lessons or other extracurricular activities  
23 while on the COUNTY’s dime. On or about August 22, 2017, AC Satellite Human Resources  
24 Manager, Hilda Garcia, emailed Plaintiff to advise her not to contact the COUNTY’s Central Human  
25 Resources office about this issue and that she would discuss Plaintiff’s concerns regarding  
26 WOOLERY that day. Plaintiff responded that WOOLERY’s actions are unacceptable and she would  
27 like clarity on the issue.





1 information to a person with authority over her who has authority to investigate, discovery, or correct  
2 a violation or noncompliance. Specifically, Plaintiff had reasonable cause to believe that the acts of  
3 WOOLERY (i.e. the leak of confidential and sensitive information to the press and misuse of public  
4 funds) was a violation of state or federal statute, or a violation of or noncompliance with a local,  
5 state, or federal rule or regulation.

6 39. In addition, Plaintiff was retaliated against for refusing to participate in an activity  
7 (i.e. allow COUNTY employees to perform personal favors for WOOLERY related to the care of  
8 his minor children) that would result in a violation of state or federal statute, or a violation of or  
9 noncompliance with a local, state, or federal rule or regulation.

10 40. Plaintiff complained and actively opposed unlawful COUNTY practices. The  
11 complaints and active opposition was readily known to Defendants.

12 41. On October 25, 2017, Plaintiff was suspended from her position with the COUNTY  
13 as the Director of Internal Audit. On January 19, 2018, Plaintiff's employment was terminated based  
14 upon pretextual grounds.

15 42. As a result of Defendants' misconduct as alleged above, Plaintiff has suffered lost  
16 past and future wages, loss of benefits including her pension, and emotional and mental distress all  
17 to her detriment in an amount to be proven at trial. Plaintiff also seeks the recovery of attorney's  
18 fees pursuant to California Code of Civil Procedure § 1021.5 and pursuant to the Private Attorneys  
19 General Act as this action has resulted in the enforcement of an important right affecting the public  
20 interest.

21 **SECOND CAUSE OF ACTION**

22 **Intentional Infliction of Emotional Distress**

23 **Against All Defendants**

24 43. The allegations of the paragraphs above are realleged and incorporated herein by  
25 reference except where to do so would be inconsistent with pleading a cause of action for Intentional  
26 Infliction of Emotional Distress.

27 44. Plaintiff is informed and believes, and thereon alleges, that such acts of Defendants  
28 were intentional, extreme and outrageous. Plaintiff is further informed and believes, and thereon

1 alleges, that such actions were done with the intent to cause serious emotional distress or with  
2 reckless disregard of the probability of causing Plaintiff serious emotional distress.

3 45. As a result of WOOLERY and COUNTY's actions, Plaintiff suffered and continues  
4 to suffer severe emotional distress in a sum to be shown according to proof and within the jurisdiction  
5 of the Superior Court.

6 46. As a direct, legal, and proximate result of such acts of Defendants, Plaintiff must seek  
7 the services of therapists and physicians to overcome the distress. Plaintiff believes that she will  
8 necessarily by reason of her injuries, incur additional like expenses for an indefinite period of time  
9 in the future, all to Plaintiff's damage in a sum to be shown according to proof.

10  
11 **VII.**

12 **PRAYER FOR RELIEF**

13 Wherefore, Plaintiff prays for relief and judgment against Defendants, and each of them, as  
14 follows:

- 15 1. For lost past and future wages and benefits;
- 16 2. For medical and related expenses according to proof;
- 17 3. For reinstatement of employment with the COUNTY;
- 18 4. For attorneys' fees and costs, as allowed by law, including, but not limited to, those  
19 allowed under Civil Code § 1021.5, the Private Attorney Generals Act, and/or other  
20 applicable provisions of law;
- 21 5. For damages and penalties permitted by the Labor Code;
- 22 6. For prejudgment interest on all amounts claimed, as allowed by law; and
- 23 7. For such other and further relief as the Court deems just and proper.

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**VIII.**

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on issues so triable.

LYON LEGAL, P.C.

Dated: January 29, 2018

By:   
\_\_\_\_\_  
DEVON M. LYON, ESQ.  
JENNIFER F. HOOSHMAND, ESQ.

Attorneys for Plaintiff,  
**TONETTE SMART**