

1 JOHN A. GIRARDI, State Bar No. 54917
2 GIRARDI/KEESE
3 1126 Wilshire Boulevard
4 Los Angeles, CA 90017
5 (213) 977-0211 Telephone
6 (213) 481-1554 Facsimile

7 LAWRENCE J. LENNEMANN, State Bar No. 134108
8 LAW OFFICE OF LAWRENCE J. LENNEMANN
9 1126 Wilshire Boulevard
10 Los Angeles, California 90017
11 (310) 795-6317 Telephone
12 (913) 402-4699 Facsimile

13 Attorneys for Plaintiff
14 GINA SCHWIN-WHITESIDE

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT

MAY 16 2011

BY Rose Minnock
ROSE MINNOCK DEPUTY

CIVVS 1102774

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SAN BERNARDINO, VICTORVILLE DISTRICT

By FAY
C.R.C. 0005

17 GINA SCHWIN-WHITESIDE, an Individual

18 Plaintiff,

19 vs.

20 TOWN OF APPLE VALLEY; and DOES 1 -
21 50, Inclusive,

22 Defendants.

CASE NO.:

PLAINTIFF GINA SCHWIN-WHITESIDE'S
COMPLAINT FOR:

- (1) DISPARATE TREATMENT IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT;
- (2) RETALIATION IN VIOLATION OF PUBLIC POLICY;
- (3) RETALIATION IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT;
- (4) HOSTILE WORK ENVIRONMENT IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT;
- (5) FAILURE TO PREVENT HARASSMENT OR DISCRIMINATION IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT; AND
- (6) FAILURE TO CONDUCT A TIMELY INVESTIGATION IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT

1 Plaintiff Gina Schwin-Whiteside ("SCHWIN-WHITESIDE" or "Plaintiff"), with knowledge as to
2 her own acts and based upon information and belief with regard to all other matters, by and through her
3 attorneys of record, alleges as follows:
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5 1. SCHWIN-WHITESIDE is an individual and a female who, at all times relevant herein,
6 resided within the County of San Bernardino, State of California and was employed by Defendant Town of
7 Apple Valley ("TOWN" or "Defendant") at Defendant's business office(s) located in the County of San
8 Bernardino, State of California.
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10 2. SCHWIN-WHITESIDE alleges that TOWN is an entity of unknown origin, doing business
11 in the County of San Bernardino, State of California.
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13 3. Defendants TOWN and DOE Defendants 1 through 50 are hereinafter sometimes collectively
14 referred to as "Defendants".
15

16 4. SCHWIN-WHITESIDE is presently not aware of the true names and/or capacities of
17 defendants DOES 1 through 50, inclusive, and therefore sues said defendants by such fictitious names.
18 SCHWIN-WHITESIDE is informed and believes and upon such information and belief alleges that said
19 fictitiously named defendants are directly and proximately responsible for the injuries and damages alleged
20 herein. SCHWIN-WHITESIDE will amend this Complaint to allege the true names and capacities of said
21 fictitiously named defendants when, and if, ascertained.
22

23 5. SCHWIN-WHITESIDE is informed and believes and upon such information and belief
24 alleges that at all relevant times each and every Defendant was a principle, agent, employer, employee,
25 manager, supervisor, officer, shareholder and/or owner of each and every other Defendant, and each and
26 every act and/or omission of each and every Defendant occurred by and through the owner of the Defendant
27 and within the course and scope of such agency and/or employment and/or was approved and/or ratified by
28 the acts and/or omissions of each and every other Defendant.

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FACTUAL BACKGROUND

A. **SCHWIN-WHITESIDE Becomes Employed with TOWN, is Promoted and Receives "Outstanding" Evaluations.**

6. SCHWIN-WHITESIDE's government career began in 1987, after graduating from the San Bernardino Sheriff's Academy, as a Dispatcher for the Barstow Police Department. In 1989, SCHWIN-WHITESIDE was promoted to Code Enforcement Officer and by 1990 she was actively serving on the Board of Directors for the Southern California Association of Code Enforcement Officials ("SCACEO"). SCHWIN-WHITESIDE remained actively involved in SCACEO for over fifteen years, serving as Education Chair, Second Vice-President, Vice-President and President. During SCHWIN-WHITESIDE's tenure, SCACEO implemented a college accredited code enforcement official certification program that is recognized statewide. In 1994, SCHWIN-WHITESIDE completed her Associate of Arts degree through Victor Valley College.

7. In 1995, SCHWIN-WHITESIDE received an esteemed Helen Putnam Award presented by then-Governor Pete Wilson for her achievements in creating a voluntary compliance program that targeted illegally dumped tires, appliances and inoperative vehicles by enhancing public/private partnerships. During this same year, SCHWIN-WHITESIDE was hired by TOWN as a Senior Code Enforcement Officer.

8. In 1996, SCHWIN-WHITESIDE was promoted to Code Enforcement Supervisor. SCHWIN-WHITESIDE was also selected by the TOWN Manager as Employee of the Year. In 1998, SCHWIN-WHITESIDE completed her Bachelor of Science in Business Management through Azusa Pacific University with honors.

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1 9. In 2000, SCHWIN-WHITESIDE was promoted to Project Manager. Within one year,
2 SCHWIN-WHITESIDE obtained her Grant Writer certification through California State University, San
3 Bernardino. SCHWIN-WHITESIDE actively wrote successful grant applications for TOWN, the Lewis
4 Center for Educational Research (K-12 school partnering with TOWN) and the Apple Valley Fire Protection
5 District (Fire District partnering with TOWN). In 2005, SCHWIN-WHITESIDE completed her Master of
6 Arts in Pupil Personnel Services-Counseling while earning credits toward a School Psychology credential.
7

8 10. SCHWIN-WHITESIDE consistently excelled in her duties and each year was given more
9 responsibilities. In fact, her Performance Evaluations were consistently "outstanding". During the entire
10 tenure of her employment with TOWN, SCHWIN-WHITESIDE has never been reprimanded or disciplined.
11

12 11. By 2006, SCHWIN-WHITESIDE was classified as the Director of Municipal Services with
13 Department Head responsibilities for Code Enforcement, Transit and Solid Waster, as well as Animal
14 Shelter, Animal Control, Project Management and the Apple Valley Community Resource Foundation.
15

16 12. At the time SCHWIN-WHITESIDE held this Director-level position, she was one of only
17 two females in an executive management position.
18

19 **B. TOWN's Pattern and Practice of Discrimination and Retaliation.**

20 13. TOWN has had a pattern and practice of discrimination and retaliation against females and
21 homosexuals. For example, former TOWN council member and Mayor, Tim Jasper ("Jasper"), repeatedly
22 referred to SCHWIN-WHITESIDE and Deputy Town Manager Patty Saady ("Saady") as "the Lesbian
23 Nazis" and/or "the Lesbian Mafia". Further, some direct quotes from the local newspaper, The Daily Press,
24 stated, inter alia, as follows: (1) "Now the Lesbian Nazis can really make living in our town a "better way
25 of life"; (2) "I got it. Maybe Rosie O'Donnell could be the next Town Manager"; and (3) I am saddened to
26 see that my new community is filled with individuals who focus on orientation rather than hard work and
27 merit".
28

1 14. In or about November 2007, there were comments made by council members in front of the
2 entire Town Council that "the Lesbian Nazis needed to go". It became especially apparent that Jasper
3 ("Jasper") had an agenda against SCHWIN-WHITESIDE and Saady.
4

5 15. While TOWN had retained attorneys to "investigate" SCHWIN-WHITESIDE and Saady,
6 TOWN has failed to investigate male heterosexuals against whom complaints were filed (i.e., Dennis Cron,
7 TOWN's male supervisor who was publically accused of extorting bribes from local community
8 developers).
9

10 16. Lylith Cook ("Cook"), a Grant Specialist supervised by SCHWIN-WHITESIDE, believed
11 that Saady and SCHWIN-WHITESIDE were being targeted because of sexual orientation. Cook openly
12 defended Saady and SCHWIN-WHITESIDE and encouraged other TOWN employees to write letters in
13 support of them. In retaliation for Cook's public support of Saady and SCHWIN-WHITESIDE, she was
14 targeted for removal by Jasper through Interim Town Manager James L. Cox ("Cox").
15

16 17. After receiving a complaint from Jasper, Cox immediately ordered a reassignment of Cook
17 to the Finance Department, stating that grant activities involve money and belong under the direction of
18 Finance. SCHWIN-WHITESIDE voiced her concern to Cox and others (specifically Saady and Director
19 of Finance William Pattison) that employment actions were being taken against Cook in retaliation for her
20 making or supporting a claim of discrimination.
21

22 18. SCHWIN-WHITESIDE issued a memorandum and spoke to Cox asking that Cook be given
23 additional time to transition to her new assignment because Cook suffered from a social anxiety and Cox's
24 plans to abruptly move her into a cubicle in the larger open office area would cause her harm. SCHWIN-
25 WHITESIDE also asked Cox to postpone his decision until more information could be provided on Cook
26 (who believed she was being reassigned as retaliation for her support of SCHWIN-WHITESIDE and Saady).
27
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1 SCHWIN-WHITESIDE repeatedly requested to be able to work with Cook to help Cook deal with the
2 transition, thereby allowing her to continue working.

3
4 19. Cox became visibly angry with SCHWIN-WHITESIDE and changed the reasons for Cook's
5 reassignment from "belongs under Finance" to alleged performance issues with her modified schedule. Cox
6 also stated that he had received complaints from "12 employees" that Cook was rarely at work and that he
7 had the Police Department watching the Municipal Services building late at night to document who was
8 coming and going from the building and that Cook had not been observed coming to work.

9
10 20. SCHWIN-WHITESIDE commented that no reported performance issues had been raised or
11 documented prior to this change and, while her previous reasons for a modified schedule were because of
12 her daughter, Cook's most recent modified schedule was due to her husband's hospitalization. SCHWIN-
13 WHITESIDE was ordered to remove herself from the situation because she was "too personally involved"
14 and because Cook had filed a Worker's Compensation Claim. Cox stated that Cook would have to prove
15 her claims.
16

17 21. On or about March of 2008, SCHWIN-WHITESIDE advised Cox that she needed to begin
18 using leave to help her sons through their other mothers' diagnosis of a terminal brain tumor. SCHWIN-
19 WHITESIDE began using leave throughout the illness and after the death to provide care for her sons. On
20 or about April of 2008, SCHWIN-WHITESIDE met again with Cox regarding her children and her
21 continued need to use leave time with a modified work day. At no time was SCHWIN-WHITESIDE
22 notified by TOWN of her rights under the Family Medical Leave Act and TOWN failed to timely and fully
23 comply with same as it related to SCHWIN-WHITESIDE.
24
25

26 22. On or about May of 2008, SCHWIN-WHITESIDE was advised by Susan Ward, the
27 Administrative Services Manager, that her appraisal review and pay raise was being postponed by Cox
28

1 because of personal reasons (use of leave). On or about June of 2008, the systematic removal of the duties
2 and responsibilities of SCHWIN-WHITESIDE began.

3
4 23. While TOWN had retained attorneys to "investigate" SCHWIN-WHITESIDE and Saady,
5 TOWN has failed to investigate male heterosexuals against whom complaints were filed (i.e., Dennis Cron,
6 TOWN's male supervisor who was publically accused of extorting bribes from local community
7 developers).

8
9 24. On or about January of 2008, Cox commented in a staff meeting and in writing that he had
10 been tasked by the Town Council with a list of things to accomplish during his temporary assignment. On
11 or about February of 2008, Cox issued a memorandum indicating that he will begin serving as Personnel
12 Officer rather than the current designee, Saady, who had served as the Personnel Officer since August of
13 1989. In the weeks that followed, Cox systematically reassigned all of Saady's duties to other departments
14 and individuals. On or about February 7, 2008, Cox issued a memorandum requesting a list of qualifications
15 and experience from SCHWIN-WHITESIDE.
16

17
18 25. During a March 18, 2008 staff meeting, Cox made derogatory statements regarding the
19 Municipal Services Manager, Diana McKeen ("McKeen") who was assigned to SCHWIN-WHITESIDE's
20 department. Cox stated that McKeen appeared to have been promoted without justification and had a
21 position description that doesn't make sense and that no other city had. Cox also stated he had received
22 complaints that McKeen was always out of the office attending meetings or training and he questioned why
23 the TOWN would, unlike other High Desert cities, maintain such a position.
24

25 26. SCHWIN-WHITESIDE received numerous memorandums from Cox regarding positions
26 assigned to her department, requesting clarification on past items handled by the department and requesting
27 verbal notices regarding complaints being submitted by Jasper against Cook and McKeen. The focus of
28 Cox's investigation was limited to duties and employees of SCHWIN-WHITESIDE.

1 27. Cox (at the direction of the Town Council) hired an outside investigator to investigate
2 numerous unsubstantiated and fabricated allegations focused solely on Saady and SCHWIN-WHITESIDE
3 over the course of several months. At the conclusion of the investigation, Saady received a written statement
4 from the investigator that "I found no evidence that you engaged in misconduct or anything warranting
5 discipline". Additionally, the accusations and complaints against SCHWIN-WHITESIDE were also without
6 merit and the investigation was closed. On or about June of 2008, Cox reassigned Cook to Finance..
7

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9 28. After various "investigations" initiated by TOWN against Saady (which resulted in "no
10 evidence that [she] engaged in misconduct or anything warranting discipline"), her position was
11 "eliminated" and SCHWIN-WHITESIDE is informed and believes that Saady retired with a financial
12 settlement from TOWN.
13

14 **C. TOWN "Reorganizes".**

15 29. In or about September 2008, a "reorganization" occurred which abolished the position of
16 Deputy Town Manager and created three new Assistant Town Manager positions. Two of the positions
17 required a minimum of a four year college degree. However, the third assistant position (the Assistant Town
18 Manager/Municipal Operations and Contract Services) states: "While a college degree is desirable, an
19 equivalent combination of training and experience which enables the candidate to carry out the duties as
20 described will be acceptable for appointment to this position." It is evident that this position was tailored
21 to meet the qualifications (or lack thereof) of Dennis Cron, a heterosexual male with lesser qualifications
22 than SCHWIN-WHITESIDE and who was alleged to be "squeezing" the development community for free
23 trips and cruises but whom was never investigated.
24
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26 30. Since Cron has become SCHWIN-WHITESIDE's supervisor, Cron has been rude,
27 demeaning, critical and condescending to SCHWIN-WHITESIDE. SCHWIN-WHITESIDE has repeatedly
28 complained to Cron and other TOWN management staff that SCHWIN-WHITESIDE is being discriminated

1 against because of her gender, her sexual orientation and for speaking up when her and other TOWN's
2 employee's rights were being violated.

3
4 **D. Following SCHWIN-WHITESIDE's Complaints, TOWN Retaliates Against her by**
5 **Redirecting her Responsibilities.**

6 31. Systematically, different areas that SCHWIN-WHITESIDE was responsible for as the
7 Director of Municipal Services were redirected to other managers. In one instance, the Grant Specialist (who
8 suffers from Social Anxiety Disorder) was advised that her position was being reassigned. SCHWIN-
9 WHITESIDE stated that this employee needed more time to adjust to the change and at a minimum should
10 be allowed to maintain a private office. When SCHWIN-WHITESIDE defended the employee, the Interim
11 Town Manager became visibly angry and informed SCHWIN-WHITESIDE that the employee "needed to
12 make it work and do her job" and that, because of supposed "performance issues", the employee would no
13 longer be allowed to remain on her modified schedule. (This employee has since filed a wrongful
14 termination and discrimination lawsuit.)
15
16

17 **E. Following SCHWIN-WHITESIDE's Complaints, TOWN Retaliates by Demoting Her.**
18

19 32. On or about June 1, 2009, SCHWIN-WHITESIDE was demoted from Director of Municipal
20 Services (director level position) to Animal Manager (manager level position). SCHWIN-WHITESIDE was
21 informed that she would no longer supervise the code enforcement division.
22

23 33. TOWN's demotion of SCHWIN-WHITESIDE is in violation of TOWN's own Personnel
24 Policies which provide: "Demotion - The movement of an employee from one class to another class having
25 a lower maximum base rate of pay" which may result only from a "Major Disciplinary Action." (Again, not
26 only has SCHWIN-WHITESIDE's performance been repeatedly described as "outstanding", but she has
27 been repeatedly told that her demotion was **not** "performance based".)
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1 34. When SCHWIN-WHITESIDE was demoted, she submitted a memorandum to her supervisor.
2 This memorandum stated that SCHWIN-WHITESIDE's supervisor told her that she was being demoted,
3 not because of her performance but to create "efficiency". SCHWIN-WHITESIDE's supervisor informed
4 her that, although he had read the memorandum, he was choosing not to respond to it.
5

6 35. As a result of this demotion, SCHWIN-WHITESIDE's salary range is substantially lower.
7 Further, her salary has been frozen and will not be increased. She has lost the \$470.00 per month in
8 automobile allowance. She has been changed from Executive Management Level Benefits to Management
9 Level Benefits resulting in her "administrative leave" being reduced from 80 days per year to 56 days per
10 year and resulting in her deferred compensation being reduced from 5% of salary to 3% of salary. Further,
11 the promotional opportunity she was denied would have resulted in an approximate \$20,000.00 per year
12 increase for not only the time of her employment but throughout her retirement benefits as well.
13
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15 36. SCHWIN-WHITESIDE's demotion was not related to SCHWIN-WHITESIDE's job
16 performance but, rather, was due to SCHWIN-WHITESIDE's sex (female) and sexual orientation
17 (homosexual). SCHWIN-WHITESIDE was replaced with a heterosexual male with lesser qualifications.
18

19 **F. TOWN Continues to Retaliate against SCHWIN-WHITESIDE and SCHWIN-**
20 **WHITESIDE Files a Complaint with the Department of Fair Employment and**
21 **Housing.**
22

23 37. In November of 2009, SCHWIN-WHITESIDE was on leave for a medical procedure. While
24 on medical leave, TOWN began interviewing all of her staff based on a supposed anonymous complaint
25 against her. SCHWIN-WHITESIDE received verbal assurances that, despite this months-long
26 "investigation", nothing of consequence was uncovered or substantiated.
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1 38. Furthermore, SCHWIN-WHITESIDE filed a complaint against an employee for making
2 slanderous statements against SCHWIN-WHITESIDE. This employee repeatedly stated that SCHWIN-
3 WHITESIDE had "helped clean up a crime scene" because SCHWIN-WHITESIDE picked up the Deputy
4 Town Manager's grandson from a home in which a weapon had been accidentally discharged. (SCHWIN-
5 WHITESIDE had known the Deputy Town Manager for over 23 years.) The employee SCHWIN-
6 WHITESIDE filed a complaint against then went around stating: "There is a mouse in the house" and "we
7 have mice in the building." Now, the employees who overheard the other employee make the false
8 statement that SCHWIN-WHITESIDE had "helped clean up a crime scene" are afraid to provide
9 information.
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12 39. On or about May 24, 2010, SCHWIN-WHITESIDE filed the requisite administrative
13 Complaint with the Department of Fair Employment and Housing.
14
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16 **FIRST CAUSE OF ACTION**

17 **DISPARATE TREATMENT IN VIOLATION OF THE CALIFORNIA**

18 **FAIR EMPLOYMENT AND HOUSING ACT**

19 **(Against Defendants TOWN and DOES 1 through 50)**

20 40. SCHWIN-WHITESIDE realleges Paragraphs 1 through 39 above and incorporates same as
21 though fully set forth herein.
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24 41. Section 12940 of the *Government Code* provides that it is an unlawful employment practice
25 "[f]or an employer, because of the race, religious creed, color, national origin, ancestry, physical disability,
26 mental disability, medical condition, marital status, sex, or sexual orientation of any person, to refuse to hire
27 or employ the person or to refuse to select the person for a training program leading to employment, or to
28 bar or to discharge the person from employment or from a training program leading to employment, or to

1 discriminate against the person in compensation or in terms, conditions, or privileges of employment.”

2 42. As stated in detail herein, SCHWIN-WHITESIDE was employed by Defendants and
3 Defendants wrongfully discriminated against SCHWIN-WHITESIDE.
4

5 43. As stated in detail herein, Defendants’ demotion of SCHWIN-WHITESIDE was based upon
6 SCHWIN-WHITESIDE’s sex (female) and sexual orientation (homosexual). Indeed, SCHWIN-
7 WHITESIDE’s sex and sexual orientation were a or the motivating reason(s) for Defendants’ demotion of
8 SCHWIN-WHITESIDE.
9

10 44. The aforementioned acts of discrimination and retaliation were perpetrated by Defendants’
11 agents and/or supervisors. Furthermore, Defendants’ agents and/or supervisors knew or should have known
12 of the wrongful conduct and failed to take immediate and appropriate corrective action. Defendants failed
13 to take all reasonable steps to prevent this discrimination and retaliation from occurring.
14

15 45. In committing the wrongful acts, Defendants, and each of them, acted intentionally and with
16 malice to retaliate against SCHWIN-WHITESIDE.
17

18 46. As a direct and proximate result of the wrongful acts and/or omissions of Defendants, and
19 each of them, as stated herein, SCHWIN-WHITESIDE has sustained and will sustain general damages in
20 the future for past, present and future physical, psychological and emotional discomfort, pain and suffering
21 and severe emotional distress, in amounts according to proof at Trial.
22

23 47. As a direct and proximate result of the wrongful acts and/or omissions of Defendants, and
24 each of them, SCHWIN-WHITESIDE sustained and will continue to sustain significant pecuniary damage
25 for the loss of past and future earnings, and earning capacity, and loss of benefits in amounts presently
26 unascertained and according to proof at Trial.
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1 48. Pursuant to California *Government Code* Section 12965, SCHWIN-WHITESIDE is entitled
2 to an award against Defendants, and each of them, of attorneys' fees and costs incurred in this action.
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5 **SECOND CAUSE OF ACTION**

6 **RETALIATION AND WRONGFUL DEMOTION IN VIOLATION OF PUBLIC POLICY**

7 **(Against Defendants TOWN and DOES 1 through 50)**

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9 49. SCHWIN-WHITESIDE realleges Paragraphs 1 through 48 above and incorporates same as
10 though fully set forth herein.

11 50. As alleged in detail above, Defendants retaliated against and demoted SCHWIN-WHITESIDE
12 for reasons that violate a public policy, including SCHWIN-WHITESIDE's filing of her FEHA Complaint,
13 the filing of the instant Complaint (with its FEHA claims), SCHWIN-WHITESIDE's complaining of the acts
14 and/or omissions set forth in the FEHA Complaint and in the instant Complaint and SCHWIN-
15 WHITESIDE's participation in same. This claim against a governmental entity is expressly provided for by
16 statute. *Government Code*, §12940, *et.seq.*
17

18
19 51. As alleged above, SCHWIN-WHITESIDE was employed by Defendants.

20 52. As alleged in detail above, Defendants retaliated against and demoted SCHWIN-WHITESIDE
21 because of SCHWIN-WHITESIDE's proactive approach to complaining about TOWN's employees who
22 were engaging in violations of the law (i.e., *Government Code* §12940, *etc.*). SCHWIN-WHITESIDE's
23 proactive approach to complaining about TOWN's employees who were engaging in violations of the law
24 was a motivating reason for Defendants' retaliation against and demotion of SCHWIN-WHITESIDE.
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53. The aforementioned acts of retaliation and improper acts of demotion were perpetrated by Defendants' agents and/or supervisors. Furthermore, Defendants' agents and/or supervisors knew or should have known of the wrongful conduct and failed to take immediate and appropriate corrective action. Defendants failed to take all reasonable steps to prevent this discrimination and retaliation from occurring.

54. In committing the wrongful acts, Defendants, and each of them, acted intentionally and with malice to retaliate against SCHWIN-WHITESIDE.

55. As a direct and proximate result of the wrongful acts and/or omissions of Defendants, and each of them, as stated herein, SCHWIN-WHITESIDE has sustained and will sustain general damages in the future for past, present and future physical, psychological and emotional discomfort, pain and suffering and severe emotional distress, in amounts according to proof at Trial.

56. As a direct and proximate result of the wrongful acts and/or omissions of Defendants, and each of them, SCHWIN-WHITESIDE sustained and will continue to sustain significant pecuniary damage for the loss of past and future earnings, and earning capacity, and loss of benefits in amounts presently unascertained and according to proof at Trial.

57. Pursuant to California *Government Code* Section 12965, SCHWIN-WHITESIDE is entitled to an award against Defendants, and each of them, of attorneys' fees and costs incurred in this action.

THIRD CAUSE OF ACTION

RETALIATION IN VIOLATION OF THE CALIFORNIA

FAIR EMPLOYMENT AND HOUSING ACT

(Against Defendants TOWN and DOES 1 through 50)

58. SCHWIN-WHITESIDE realleges Paragraphs 1 through 57 above and incorporates same as though fully set forth herein.

1 59. Section 12940 of the California *Government Code* provides that it is an unlawful employment
2 practice "[f]or any employer, labor organization, employment agency, or person to discharge, expel, or
3 otherwise discriminate against any person because the person has opposed any practices forbidden under this
4 part or because the person has filed a complaint, testified, or assisted in any proceeding under this part."

6 60. Additionally, the Fair Employment and Housing Commission's regulations provide: "It is
7 unlawful for an employer or other covered entity to demote, suspend, reduce, fail to hire or consider for hire,
8 fail to give equal consideration in making employment decisions, fail to treat impartially in the context of any
9 recommendations for subsequent employment which the employer or other covered entity may make,
10 adversely affect working conditions or otherwise deny any employment benefit to an individual because that
11 individual has opposed practices prohibited by the Act or has filed a complaint, testified, assisted or
12 participated in any manner in an investigation, proceeding, or hearing conducted by the Commission or
13 Department or their staffs."

16 61. As stated in detail herein, Defendants retaliated against SCHWIN-WHITESIDE for SCHWIN-
17 WHITESIDE's opposing of practices forbidden under the Fair Employment and Housing Act and because
18 SCHWIN-WHITESIDE complained of acts forbidden under the Fair Employment and Housing Act and
19 because SCHWIN-WHITESIDE filed a complaint under the Fair Employment and Housing Act.

21 62. As stated in detail herein, Defendants demoted SCHWIN-WHITESIDE because of SCHWIN-
22 WHITESIDE's participation in activities protected by the Fair Employment and Housing Act and SCHWIN-
23 WHITESIDE's filing of a complaint under the Fair Employment and Housing Act. These acts by SCHWIN-
24 WHITESIDE were motivating reason(s) for Defendants' decision to demote SCHWIN-WHITESIDE.

26 63. As a result of SCHWIN-WHITESIDE's filing of complaints related to the Fair Employment
27 and Housing Act, and in retaliation for and in reaction to same, Defendants demoted SCHWIN-
28 WHITESIDE.

1 64. The aforementioned acts of retaliation were perpetrated by Defendants' agents and/or
2 supervisors. Furthermore, Defendants' agents and/or supervisors knew or should have known of the wrongful
3 conduct and failed to take immediate and appropriate corrective action. Defendants failed to take all
4 reasonable steps to prevent this discrimination and retaliation from occurring.
5

6 65. In committing the wrongful acts, Defendants, and each of them, acted intentionally and with
7 malice to retaliate against SCHWIN-WHITESIDE.
8

9 66. As a direct and proximate result of the wrongful acts and/or omissions of Defendants, and each
10 of them, as stated herein, SCHWIN-WHITESIDE has sustained and will sustain general damages in the future
11 for past, present and future physical, psychological and emotional discomfort, pain and suffering and severe
12 emotional distress, in amounts according to proof at Trial.
13

14 67. As a direct and proximate result of the wrongful acts and/or omissions of Defendants, and each
15 of them, SCHWIN-WHITESIDE sustained and will continue to sustain significant pecuniary damage for the
16 loss of past and future earnings, and earning capacity, and loss of benefits in amounts presently unascertained
17 and according to proof at Trial.
18

19 68. Pursuant to California *Government Code* Section 12965, SCHWIN-WHITESIDE is entitled
20 to an award against Defendants, and each of them, of attorneys' fees and costs incurred in this action.
21

22 **FOURTH CAUSE OF ACTION**

23 **HOSTILE WORK ENVIRONMENT IN VIOLATION OF THE CALIFORNIA**

24 **FAIR EMPLOYMENT AND HOUSING ACT**

25 **(Against TOWN and DOES 1 through 50)**

26 69. SCHWIN-WHITESIDE realleges Paragraphs 1 through 68 above and incorporates same as
27 though fully set forth herein.
28

1 70. Section 12940 of the California *Government Code* provides that it is an unlawful employment
2 practice for "an employer . . . or any other person, because of race, religious creed, color, national origin,
3 ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual
4 orientation, to harass an employee, an applicant, or a person providing services pursuant to a contract.
5 Harassment of an employee, an applicant, or a person providing services pursuant to a contract by an
6 employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows
7 or should have known of this conduct and fails to take immediate and appropriate corrective action. An entity
8 shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not
9 be necessary in order to establish harassment."
10

11
12 71. SCHWIN-WHITESIDE was subjected to harassment based on her sex and sexual orientation.
13 Specifically, SCHWIN-WHITESIDE was subjected to unwanted harassing conduct because she is a female
14 and because she is a homosexual.
15

16 72. The harassing conduct was so severe, widespread and/or persistent that a reasonable female
17 and homosexual in SCHWIN-WHITESIDE's circumstances would have considered the work environment
18 to be hostile or abusive and SCHWIN-WHITESIDE considered the work environment to be hostile or
19 abusive.
20

21 73. The above-described conduct was engaged in by various supervisors and Defendants' other
22 supervisors or agents knew or should have known of the conduct and failed to take immediate and appropriate
23 corrective action.
24

25 74. In committing the wrongful acts, Defendants, and each of them, acted intentionally and with
26 malice to retaliate against SCHWIN-WHITESIDE.
27

28 75. As a direct and proximate result of the wrongful acts and/or omissions of Defendants, and each
of them, as stated herein, SCHWIN-WHITESIDE has sustained and will sustain general damages in the future

1 for past, present and future physical, psychological and emotional discomfort, pain and suffering and severe
2 emotional distress, in amounts according to proof at Trial.

3
4 76. As a direct and proximate result of the wrongful acts and/or omissions of Defendants, and each
5 of them, SCHWIN-WHITESIDE sustained and will continue to sustain significant pecuniary damage for the
6 loss of past and future earnings, and earning capacity, and loss of benefits in amounts presently unascertained
7 and according to proof at Trial.

8
9 77. Pursuant to California *Government Code* Section 12965, SCHWIN-WHITESIDE is entitled
10 to an award against Defendants, and each of them, of attorneys' fees and costs incurred in this action.

11
12 **FIFTH CAUSE OF ACTION**

13
14 **FAILURE TO PREVENT HARASSMENT OR DISCRIMINATION IN VIOLATION**

15 **OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT**

16 **(Against Defendants TOWN and DOES 1 through 50)**

17 78. SCHWIN-WHITESIDE realleges Paragraphs 1 through 77 above and incorporates same as
18 though fully set forth herein.

19
20 79. Section 12940 of the California *Government Code* provides that it is an unlawful employment
21 practice for "an employer, labor organization, employment agency, apprenticeship training program, or any
22 training program leading to employment, to fail to take all reasonable steps necessary to prevent
23 discrimination and harassment from occurring." This duty to prevent harassment and discrimination is
24 "affirmative and mandatory".
25

26 80. As set forth herein, SCHWIN-WHITESIDE claims that Defendants failed to prevent
27 harassment and discrimination based upon SCHWIN-WHITESIDE's sex and sexual orientation, despite her
28 repeatedly complaining regarding same.

1 81. As alleged in detail herein, SCHWIN-WHITESIDE was subjected to both harassing conduct
2 and discrimination because she is a female and because she is a homosexual.

3
4 82. Defendants failed to take reasonable steps to prevent the harassment and discrimination that
5 occurred. Defendants' failure to take reasonable steps to prevent the harassment and discrimination was a
6 substantial factor in causing SCHWIN-WHITESIDE harm.

7
8 83. The above-described conduct was engaged in by various supervisors and Defendants' other
9 supervisors or agents knew or should have known of the conduct and failed to take immediate and appropriate
10 corrective action.

11 84. In committing the wrongful acts, Defendants, and each of them, acted intentionally and with
12 malice to retaliate against SCHWIN-WHITESIDE.

13
14 85. As a direct and proximate result of the wrongful acts and/or omissions of Defendants, and each
15 of them, as stated herein, SCHWIN-WHITESIDE has sustained and will sustain general damages in the future
16 for past, present and future physical, psychological and emotional discomfort, pain and suffering and severe
17 emotional distress, in amounts according to proof at Trial.

18
19 86. As a direct and proximate result of the wrongful acts and/or omissions of Defendants, and each
20 of them, SCHWIN-WHITESIDE sustained and will continue to sustain significant pecuniary damage for the
21 loss of past and future earnings, and earning capacity, and loss of benefits in amounts presently unascertained
22 and according to proof at Trial.

23
24 87. Pursuant to California *Government Code* Section 12965, SCHWIN-WHITESIDE is entitled
25 to an award against Defendants, and each of them, of attorneys' fees and costs incurred in this action.

26 ///

27 ///

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO CONDUCT A TIMELY INVESTIGATION IN VIOLATION**
3 **OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT**

4
5 **(Against Defendants TOWN and DOES 1 through 10)**

6 88. SCHWIN-WHITESIDE realleges Paragraphs 1 through 87 above and incorporates same as
7 though fully set forth herein.

8 89. As set forth herein, SCHWIN-WHITESIDE repeatedly complained, verbally and in writing,
9
10 to Defendants regarding Defendants' acts of harassment, discrimination and retaliation.

11 90. It is an unlawful employment practice in the State of California for an employer to fail to take
12 all reasonable steps necessary to investigate complaint(s) of harassment, discrimination and retaliation.

13 91. In violation of California law, Defendants failed to take all reasonable steps necessary to
14 investigate SCHWIN-WHITESIDE's complaints.

15 92. Specifically, Defendants failed to conduct the requisite "prompt" investigation and failed to
16 take prompt action to correct the harassing behavior. Indeed, not only did SCHWIN-WHITESIDE repeatedly
17 complain about Defendants' conduct but, thereafter, filed a DFEH Complaint in May of 2010. However, to
18
19 date, Defendants have entirely failed to conduct any type of investigation whatsoever. This failure to comply
20 with mandatory legal requirements is an inexcusable delay which resulted in SCHWIN-WHITESIDE being
21 forced to continue working in an unlawful retaliatory and discriminatory environment. without any response
22 or conclusion with regard to her complaints.

23 93. As these failures resulted in further damage to Plaintiff, Defendants' indifference results in
24 additional exposure and liability for same.

25 94. In committing the wrongful acts, Defendants, and each of them, acted intentionally and with
26 malice to retaliate against SCHWIN-WHITESIDE.
27
28

1 95. As a direct and proximate result of the wrongful acts and/or omissions of Defendants, and each
2 of them, as stated herein, SCHWIN-WHITESIDE has sustained and will sustain general damages in the future
3 for past, present and future physical, psychological and emotional discomfort, pain and suffering and severe
4 emotional distress, in amounts according to proof at Trial.
5

6 96. As a direct and proximate result of the wrongful acts and/or omissions of Defendants, and each
7 of them, SCHWIN-WHITESIDE sustained and will continue to sustain significant pecuniary damage for the
8 loss of past and future earnings, and earning capacity, and loss of benefits in amounts presently unascertained
9 and according to proof at Trial.
10

11 97. Pursuant to California *Government Code* Section 12965, SCHWIN-WHITESIDE is entitled
12 to an award against Defendants, and each of them, of attorneys' fees and costs incurred in this action.
13

14 WHEREFORE, SCHWIN-WHITESIDE prays for Judgment against Defendants, and each of them,
15 as follows:

- 16 1. For compensatory damages, including loss of earnings, deferred compensation, bonuses,
17 vacation and other employment perquisites and other special and general damages according to proof;
18
19 2. Damages for pain and suffering and severe emotional distress;
20
21 3. Interest, including pre-judgment interest, at the prevailing legal rate;
22
23 4. Attorneys' fees and costs incurred herein; and
24
25 5. Costs of suit and such further and other relief as the Court deems just and proper.

26 DATED: May 10, 2011

LAW OFFICE OF LAWRENCE J. LENNEMANN

27 By: 
28 LAWRENCE J. LENNEMANN
Attorneys for Plaintiff, GINA SCHWIN-WHITESIDE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

CIVIL 1102774

Gina Schwin-Whiteside, an
individual

Case No. _____

vs.

By FAX ore 2005
CERTIFICATE OF ASSIGNMENT

Town of Apple Valley; and DOES 1
through 50, Inclusive

A civil action or proceeding presented for filing must be accompanied by this certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the Victorville District of the Superior Court under Rule 404 of this court for the checked reason:

☒ General

☐ Collection

Nature of Action

Ground

- | | |
|--|--|
| <input type="checkbox"/> 1 Adoption | Petitioner resides within the district. |
| <input type="checkbox"/> 2 Conservator | Petitioner or conservatee resides within the district. |
| <input type="checkbox"/> 3 Contract | Performance in the district is expressly provided for. |
| <input type="checkbox"/> 4 Equity | The cause of action arose within the district. |
| <input type="checkbox"/> 5 Eminent Domain | The property is located within the district. |
| <input type="checkbox"/> 6 Family Law | Plaintiff, defendant, petitioner or respondent resides within the district. |
| <input type="checkbox"/> 7 Guardianship | Petitioner or ward resides within the district or has property within the district. |
| <input type="checkbox"/> 8 Harassment | Plaintiff, defendant, petitioner or respondent resides within the district. |
| <input type="checkbox"/> 9 Mandate | The defendant functions wholly within the district. |
| <input type="checkbox"/> 10 Name Change | The petitioner resides within the district. |
| <input type="checkbox"/> 11 Personal Injury | The injury occurred within the district. |
| <input type="checkbox"/> 12 Personal Property | The property is located within the district. |
| <input type="checkbox"/> 13 Probate | Decedent resided or resides within the district or had property within the district. |
| <input type="checkbox"/> 14 Prohibition | The defendant functions wholly within the district. |
| <input type="checkbox"/> 15 Review | The defendant functions wholly within the district. |
| <input type="checkbox"/> 16 Title to Real Property | The property is located within the district. |
| <input type="checkbox"/> 17 Transferred Action | The lower court is located within the district. |
| <input type="checkbox"/> 18 Unlawful Detainer | The property is located within the district. |
| <input type="checkbox"/> 19 Domestic Violence | The petitioner, defendant, plaintiff or respondent resides within the district. |
| <input checked="" type="checkbox"/> 20 Other <u>Employment; retaliation, hostile environment, FEHA</u> | |
| <input type="checkbox"/> 21 THIS FILING WOULD NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT. | |

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designated district is:

<u>Gina Schwin-Whiteside</u>	<u>14955 Dale Evans Parkway</u>
(NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR)	ADDRESS
<u>Apple Valley</u>	<u>California</u>
(CITY)	(STATE)
	<u>92307</u>
	(ZIP CODE)

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on

May 12, 2011 at Los Angeles, California

John A. Girardi

Signature of Attorney/Party
John A. Girardi, Esquire

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

VICTORVILLE DISTRICT
14455 CIVIC DRIVE
VICTORVILLE, CA 92392

CASE NO: CIVVS1102774

<http://www.sbcounty.gov/courts>

IN RE: SCHWIN-WHITESIDE -V- TOWN OF AV

NOTICE OF CASE ASSIGNMENT FOR ALL PURPOSES
NOTICE OF CASE MANAGEMENT CONFERENCE AND ORDER TO SHOW CAUSE
REGARDING SERVICE OF SUMMONS AND COMPLAINT

PLEASE TAKE NOTICE, that the above-entitled case has been set for a Case Management Conference and an Order to Show Cause why the case should not be dismissed for failure to serve the summons and complaint. File your Case Management Statement with the court fifteen (15) calendar days prior to the hearing. Failure to appear may result in monetary sanctions and/or dismissal of your case. THIS CASE HAS BEEN ASSIGNED TO STEVE C MALONE IN DEPARTMENT V10 FOR ALL PURPOSES.

The Order to Show Cause regarding service of summons is set: 09/08/11 at 8:30 in Department V10. If proof of service of summons and complaint has been filed before that date, no appearance is required at the time of the Order to Show Cause hearing. The Case Management Conference is set: 11/07/11 at 8:30 in Department V10.

TO THE PARTY SERVED: The setting of these dates DOES NOT increase the time you have to respond to the complaint. The time for response is clearly stated on the Summons.

A COPY OF THIS NOTICE MUST BE SERVED ON ALL DEFENDANTS

Tressa S. Kentner, Clerk of the Court

Date: 05/16/11

By: ROSE MINNOCK

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above listed notice by:

() Enclosed in an envelope mailed to the interested party addressed above, for collection and mailing this date, following ordinary business practice.

() Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above, or as shown on the attached listing.

(☒) A copy of this notice was given to the filing party at the counter.

() A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file stamped documents.

DATE OF MAILING: 05/16/11

I declare under penalty of perjury that the foregoing is true and correct. Executed on 05/16/11 at Victorville, CA By: ROSE MINNOCK