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10  
11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13

<p>14 MICAELA OCHOA,</p> <p>15 Plaintiff,</p> <p>16 vs.</p> <p>17 SANTA CLARA COUNTY OFFICE OF</p> <p>18 EDUCATION; and JON GUNDRY in his</p> <p>individual capacity,</p> <p>Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No.</p> <p><b>VERIFIED COMPLAINT FOR</b></p> <p><b>DAMAGES AND INJUNCTIVE</b></p> <p><b>RELIEF</b></p> <p>Employment/Civil Rights</p> <p><b>Jury Trial Demanded</b></p>
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19 Plaintiff Micaela Ochoa complains against defendants Santa Clara County Office of  
20 Education and Jon Gundry as follows:

21 **PRELIMINARY STATEMENT**

22 1. Plaintiff Micaela Ochoa was employed by defendant Santa Clara County Office of  
23 Education (“SCCOE”) as its Chief Business Officer when she reported violations of state and  
24 federal law to her superior and others outside her chain of command and refused to participate in  
25 activities that would have violated the law.

26 2. Ms. Ochoa told her superior, SCCOE Superintendent Jon Gundry, that the SCCOE could  
27 not misreport his moving expenses in order to avoid taxation. She refused to assist him in doing  
28 so.

1 3. Ms. Ochoa reported to SCCOE Board President Darcie Green, that Gundry was  
2 attempting to bully her and another staff person into changing his W-2 to avoid taxation on his  
3 moving expenses.

4 4. Ms. Ochoa also reported to Gundry, and to the SCCOE's General Counsel Maribel  
5 Medina, that Gundry and his Communications Director Kenneth Blackstone appeared to be  
6 violating the law by failing to disclose responsive documents in response to a California Public  
7 Records Act ("CPRA") request.

8 5. Ms. Ochoa refused to participate in not disclosing these documents and advocated several  
9 times for disclosure of the documents. Defendants responded to Ms. Ochoa's reports regarding  
10 these violations of law, and to plaintiff's refusal to obey illegal orders, by terminating her shortly  
11 after her reports.

12 6. Ms. Ochoa brings this action for violations of her constitutional right not to be punished  
13 for exercising her right to free speech under 42 U.S.C. § 1983 and California Labor Code §  
14 1102.5.

### 15 **JURISDICTION AND VENUE**

16 7. This action arises under 42 U.S.C. § 1983, to redress deprivations, under color of law, of  
17 the plaintiff's rights under the First Amendment of the United States Constitution. The Court has  
18 jurisdiction over this matter under 28 U.S.C. § 1331.

19 8. The state law claims in this action are so related to the claims in the action within original  
20 jurisdiction that they form part of the same case or controversy under Article III of the United  
21 States Constitution. The Court has supplemental jurisdiction over the related state law claims  
22 under 28 U.S.C. § 1367.

23 9. Venue is proper in the Northern District of California because the events or omissions  
24 giving rise to the claim occurred in this District in Santa Clara County.

### 25 **PARTIES**

26 10. At all relevant times, plaintiff Micaela Ochoa was the Chief Business Officer for the  
27 Santa Clara County Office of Education.  
28

1 11. At all relevant times, defendant Santa Clara County Office of Education was a California  
2 public entity located in Santa Clara County.

3 12. At all relevant times, defendant Jon Gundry was the Santa Clara County Superintendent  
4 of Schools. He is sued in his individual capacity.

5 **STATEMENT OF FACTS**

6 13. On August 27, 2012, the Santa Clara County Office of Education and its then  
7 Superintendent Xavier De La Torre hired Ms. Micaela Ochoa as the SCCOE's Chief Business  
8 Officer.

9 14. On July 16, 2014, SCCOE named Jon Gundry as its new Superintendent, at a salary of  
10 \$295,000 with additional benefits and scheduled raises. He began work on August 1, 2014.

11 15. SCCOE included up to \$30,000 in reimbursement for Gundry's moving expenses.

12 16. On February 13, 2015, Ms. Ochoa emailed Gundry informing him that some of his  
13 moving expenses were taxable under Internal Revenue Services (IRS) regulations and had to be  
14 declared as taxable income subject to payroll deduction. She had previously provided him with a  
15 copy of the IRS regulations, and had communicated the same.

16 17. Ms. Ochoa sent Gundry the Internal Revenue Service tax code that she believed applied  
17 to his expenses. She told him that he would not be taxed on reimbursements for moving  
18 company services, but that his purchases of furniture and other items would be taxed.

19 18. Ms. Ochoa referenced emails from SCCOE Director of Internal Business Ted O to  
20 Gundry regarding the taxable status of the moving expenses.

21 19. On February 13, 2015, Gundry yelled at Ms. Ochoa about having to pay moving related  
22 taxes. He told her he had been "screwed" by his contract with SCCOE and that he had to  
23 refinance his house in Southern California.

24 20. On February 19, 2015, O was working late. Gundry came to his office at around 9:20  
25 p.m. and yelled at him regarding the moving expenses tax issue. He stated that if he could not  
26 trust O or Ms. Ochoa, he would fire them. Gundry referenced the tax issue in this threat.  
27  
28

1 21. Also on the night of February 19, 2015, Gundry told Ms. Ochoa that he had monitored  
2 O's email. Gundry also screamed at Ms. Ochoa regarding the moving expenses issue. Gundry  
3 told Ms. Ochoa, "I have to pay \$10,000 in taxes! I don't trust you or Ted O."

4 22. On both February 13 and 19, 2015, Ms. Ochoa told Gundry that it was not her job to give  
5 him tax advice, and that he should hire an accountant tax advisor.

6 23. Ms. Ochoa and O believed Gundry was attempting to bully them into changing his W-2.

7 24. After this series of events, Gundry cancelled his one-on-one meetings with Ms. Ochoa.

8 25. Gundry also terminated the SCCOE's contract with the auditors who had determined that  
9 he could not deduct certain moving expenses, and retained new auditors.

10 26. Gundry cut Ms. Ochoa out of review of the hiring process for the new auditors, as well as  
11 out of all key business related decisions.

12 27. On February 25, 2015, Ms. Ochoa related these events, and Gundry's attempt to  
13 misreport his expenses, to SCCOE Board President Darcie Green. She told Green that she and O  
14 were fearful of retaliation by Gundry. She also provided Board President Green with a formal  
15 complaint from O against Gundry.

16 28. In May of 2015, the newspaper *San Jose Inside* began publishing a series of articles  
17 about Gundry's attempt to increase the amount of a contract with School Board Services  
18 Consultants ("SBSC"). Mark Skvarna was the SBSC consultant with whom Gundry contracted.  
19 Skvarna was Gundry's close, personal friend.

20 29. From November 2014 to May 2015, Gundry had paid \$92,925 of SCCOE funds to SBSC.

21 30. At a May 20, 2015, SCCOE board meeting, Gundry requested an additional \$150,000 for  
22 SBSC. Gundry placed this request on the consent calendar. Items on the consent calendar  
23 generally are not scrutinized by the SCCOE Board.

24 31. Gundry had required no documentation of results for this contract with SBSC.

25 32. In the six months that SCCOE contracted with SBSC, Skvarna never submitted a single  
26 written report. He invoiced the SCCOE for nearly \$20,000 in travel expenses.

27 33. *San Jose Inside* reporter Josh Koehn reported that the contract appeared to be designed  
28 so that SBSC's Skvarna could avoid state rules about public employee retirement.

1 34. Shortly after Gundry's attempt to funnel another \$150,000 to the SBSC became public,  
2 Skvarna quit.

3 35. On June 3 and 4, 2015, *San Jose Inside* journalist Koehn issued a series of California  
4 Public Records Acts requests to SCCOE for contracts and contract-related documents. Public  
5 entities are required to respond to CPRA requests within ten days.

6 36. It was the job duty of SCCOE Communications Director Kenneth Blackstone to provide  
7 documents in conformance with CPRA requests. Blackstone was supposed to contact the holder  
8 of the documents and then produce them to the requester.

9 37. In this case, the responsive documents were stored in Business Services, under Ms.  
10 Ochoa's authority.

11 38. However, Blackstone failed to inform Ms. Ochoa or her staff of the CPRA request.

12 39. Ms. Ochoa learned of the request because Blackstone cc'ed her on his email response to  
13 Koehn. Ms. Ochoa reviewed the documents Blackstone had sent and found many documents  
14 missing.

15 40. On June 16, 2015, Ms. Ochoa reported in an email to Gundry and SCCOE  
16 Communications Director Kenneth Blackstone that Blackstone had provided information  
17 "inconsistent with the facts" in his response to the CPRA request. She reported her concern that  
18 SCCOE's response to the CPRA was not accurate. She stated that the SCCOE needed to comply  
19 with the CPRA. Ms. Ochoa included Maribel Medina, SCCOE General Counsel, and others in  
20 this email.

21 41. Also on June 16, 2015, Ms. Ochoa relayed to Blackstone that Blackstone had not advised  
22 her or her staff her staff about the CPRA request.

23 42. On June 17, 2015, Ms. Ochoa wrote another email to Gundry, Blackstone, and others  
24 reporting that Blackstone had given false information to the journalist in response to the CPRA  
25 request. She reported that Blackstone had stated that there were no invoices to vendor James &  
26 Stewart, attorneys. In fact, Gundry had signed off on a \$4,900 invoice to James & Stewart on  
27 June 9, 2016. She again stated that SCCOE must provide correct and complete information when  
28 responding to a CPRA request. Ms. Ochoa included Medina and others in this email.

1 43. On June 18, 2015, Ms. Ochoa emailed Gundry, Blackstone, Medina, and others stating  
2 that she had returned Koehn's call to relay information as per her conversation with Blackstone.  
3 Koehn told Ms. Ochoa that he had received four contracts.

4 44. However, SCCOE had not provided several other contracts that Ms. Ochoa had sent  
5 Blackstone days earlier. These contract documents were responsive to the CPRA request.

6 45. In a second email on June 18, 2015, Ms. Ochoa followed up with Gundry and Blackstone  
7 asking if they had produced all responsive documents to Koehn. She wrote that she had  
8 researched the consequences for violating the CPRA, and included a link to information on this  
9 issue. She wrote that withholding the documents placed SCCOE "at risk of the consequences of  
10 violating the PRA request." She included Medina in this email.

11 46. On June 18, 2015, Koehn reported that SCCOE "insisted that no other records exist"  
12 aside from the four contracts sent. However, Koehn had received the other responsive contracts  
13 from an unnamed source. Koehn published a story about the contents of these contracts.

14 47. Gundry and Blackstone had withheld a contract with Sue Daniel, an outside consultant,  
15 for \$99,999, a dollar short of the amount that required approval from the Board. Koehn reported  
16 that the SCCOE Board had no knowledge of the contract.

17 48. Gundry and Blackstone also withheld contracts with outside consultants and law firms  
18 such as SOA Project for \$99,950, McArthur & Levin, LLP, for \$90,000, and multiple additional  
19 law firms for tens of thousands of dollars.

20 49. The withheld contracts included Gundry's payments to law firms James & Stewart for  
21 \$99,500, and Hanson Bridgett for \$15,000 at \$515 per hour.

22 50. On June 19, 2015, the Santa Clara County District Attorney issued a request to SCCOE  
23 for "all ADDITIONAL documents that SCCOE SHOULD HAVE initially produced in response  
24 to Public Records Act requests from Josh Koehn."

25 51. On June 29, 2015, SCCOE finally provided to Koehn the contract documents responsive  
26 to the CPRA request, 11 days after he had published an article exposing the SCCOE's failure to  
27 produce the contracts.

1 52. Also on June 29, 2015, SCCOE wrote to Koehn that its failure to provide documents was  
2 an “oversight” and “not intentional.”

3 53. On July 1, 2015, Ms. Ochoa wrote to Gundry that attorneys from James & Stewart LLP  
4 had contacted her staff person to interview the staffer at the Biltmore Hotel rather than the  
5 SCCOE offices. Ms. Ochoa wrote that she was uncomfortable because such a meeting could  
6 interfere with the District Attorney’s investigation.

7 54. That same day, Gundry responded that there was no investigation, and that Ms. Ochoa  
8 herself must meet with the James & Stewart attorneys.

9 55. On July 2, 2015, Human Resources Director Leland Takemoto and newly appointed  
10 Deputy Superintendent Mary Ann Dewan went to Ms. Ochoa’s office to deliver Gundry’s  
11 decision to terminate Ms. Ochoa, effective August 1, 2015. Gundry placed Ms. Ochoa on  
12 immediate administrative leave until the date of termination. His letter to Ms. Ochoa stated he  
13 was terminating her “without cause.”

14 56. In a press release dated July 2, 2015, SCCOE claimed that Ms. Ochoa was leaving “to  
15 pursue other professional opportunities.” Gundry hired Skvarna, formerly of SBCS, as Interim  
16 Chief Business Officer.

17 57. Gundry gave Skvarna \$8,000 in moving expenses and a \$40,000 increase in salary from  
18 what Ms. Ochoa earned.

19 58. Gundry also terminated Medina on July 2, 2015.

20 59. That day, Gundry sent out an email to SCCOE employees stating that Medina and Ms.  
21 Ochoa had left “to pursue other professional opportunities.”

22 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

23 60. Plaintiff exhausted administrative remedies by filing a claim with the SCCOE on or  
24 around December 10, 2015. The SCCOE denied that claim on January 13, 2016.

25 **FIRST CLAIM FOR VIOLATION OF FREE SPEECH RIGHTS**  
26 **(against defendant Jon Gundry)**  
27 **(42 U.S.C. § 1983)**

28 61. Plaintiff incorporates by reference paragraphs 1 through 60 above as though fully set  
forth herein.



1 62. By virtue of the foregoing, defendant Gundry, acting under color of state law, wrongfully  
2 deprived plaintiff of her free speech rights guaranteed under the Constitution of the United States  
3 by participating in adverse employment actions against plaintiff in retaliation for her speech  
4 addressing issues of public concern and her refusal to participate in unethical and unlawful  
5 conduct by defendants.

6 **SECOND CLAIM FOR RELIEF FOR VIOLATION OF**  
7 **LABOR CODE SECTION 1102.5**  
8 **(against defendant Santa Clara County Office of Education)**  
9 (Cal. Lab. Code § 1102.5)

10 63. Plaintiff incorporates by reference paragraphs 1 through 62 above as though fully set  
11 forth herein.

12 64. By virtue of the foregoing, defendant Santa Clara County Office of Education retaliated  
13 against plaintiff for disclosing what she reasonably believed were violations of state and federal  
14 laws to her supervisors and for refusing to take part in unlawful activities in violation of Labor  
15 Code section 1102.5.

16 **DAMAGES**

17 65. As a result of the actions of defendants, plaintiff has been injured and has suffered  
18 damages as follows:

- 19 (a) She has lost compensation and other employment-related benefits to which she  
20 has been entitled and will lose such compensation and benefits in the future;
- 21 (b) She has suffered from emotional distress, embarrassment and humiliation, and  
22 has suffered damage to her professional reputation and standing;
- 23 (c) She has incurred out-of-pocket expenses for health care benefits.

24 **PUNITIVE DAMAGES**

25 61. In taking the actions alleged above, defendant Jon Gundry engaged in the conduct alleged  
26 herein with malice, oppression, and reckless disregard of plaintiff's right to be free of retaliation  
27 for engaging in protected free speech. Accordingly, plaintiff is entitled to punitive damages  
28 against defendant Jon Gundry in this action.

WHEREFORE, plaintiff requests that this Court grant her relief as follows:



1 (1) Injunctive relief to require defendant Santa Clara County Office of Education to  
2 reinstate her as Chief Business Officer of SCCOE together with all pay, benefits, seniority, and  
3 emoluments of that position; and treat her without retaliation;

4 (2) Compensatory damages for past and future lost wages and benefits, in an amount  
5 to be determined;

6 (3) Interest at the legal rate;

7 (4) General damages for emotional distress, pain and suffering, in an amount to be  
8 determined;

9 (5) Special damages for out-of-pocket expenses;

10 (6) Punitive damages, in an amount to be determined;

11 (7) Attorneys' fees;

12 (8) Costs of suit; and

13 (9) Such other and further relief as the Court may deem proper.

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15 Dated: June 14, 2016

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SIEGEL & YEE

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By: /s/ \_\_\_\_\_  
Sonya Z. Mehta

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Attorneys for Plaintiff  
Micaela Ochoa

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**VERIFICATION**

I, Micaela Ochoa, declare as follows:

I am the plaintiff to this action. I have read the foregoing Verified Complaint and know its contents. The matters stated in the Verified Complaint are true based on my own knowledge, except where stated on information and belief, and as to such matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 4, 2016, at Livermore, California.

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/s/ Micaela Ochoa

Micaela Ochoa

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