

1 Susan M. Swan (241503)
2 Laura M. Kelleher (299593)
3 Paul C. Huff (347843)
4 SWAN EMPLOYMENT LAW
5 402 W. BROADWAY, SUITE 1120
6 SAN DIEGO, CALIFORNIA 92101-8513
7 TELEPHONE: (619) 432-7935
8 TELECOPIER: (619) 810-0582

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/15/2023 at 09:26:05 AM
Clerk of the Superior Court
By Cheyenne Preston, Deputy Clerk

Attorneys for Plaintiff,
MILENA AUBRY

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF SAN DIEGO – CENTRAL**

10 MILENA AUBRY, an individual,
11
12 Plaintiff,

13 v.

14 SWEETWATER UNION HIGH SCHOOL
15 DISTRICT, a public entity; and DOES 1
16 through 25, Inclusive,

17 Defendants.

Case No.: 37-2023-00020707-CU-OE-CTL

**PLAINTIFF'S COMPLAINT FOR
DAMAGES:**

1. RETALIATION [Cal. Labor Code
§§1102.5(b),(c) and (e)]

[JURY TRIAL DEMANDED]

18
19 COMES NOW THE PLAINTIFF, alleging against Defendants as follows:

20 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

- 21 1. Plaintiff, MILENA AUBRY (hereinafter "Plaintiff") is a natural person who is, and at all
22 relevant times was, a resident of the United States and a domiciliary of the State of
23 California.
- 24 2. Plaintiff is informed and believes, and thereon alleges, that Defendant SWEETWATER
25 UNION HIGH SCHOOL DISTRICT (hereinafter "SUHSD") is a public entity established
26 and organized under California law. SUHSD may sue and be sued in its own name, and is
27 subject to suit under the California Labor Code.
- 28 3. Plaintiff is ignorant to the true names and capacities of the Defendants sued herein as DOES

1 through 25. Plaintiff therefore sues these defendants by such fictitious names and will amend this Complaint to allege the true names and capacities when they are ascertained.

4. Plaintiff believes and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged, and that Plaintiff's injuries and damages as herein alleged are directly, proximately, and/or legally caused by defendants and all of their acts.

5. Plaintiff believes and thereon alleges that each of these defendants named herein as DOES are the agents, employers, representatives, or employees of the other named defendant and when performing the acts alleged herein, were acting within the scope of their agency, employment and/or representative capacity and are therefore responsible for the acts complained of herein.

6. The tortious acts and omissions alleged to have occurred herein were performed by the management-level employees of SUHSD.

7. At all times mentioned herein, Cal. Labor Code §1102.5 was in full force and effect and was binding on SUHSD.

8. The actions of SUHSD against Plaintiff constitute unlawful employment practices in violation of Cal. Labor Code §1102.5, as herein alleged, and have caused and will continue to cause, Plaintiff loss of earnings.

9. SUHSD committed these acts alleged herein maliciously, fraudulently, and oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an improper and evil motive amounting to malice or despicable conduct. Alternatively, SUHSD's wrongful conduct was carried out with a conscious disregard for Plaintiff's rights.

10. Plaintiff seeks compensatory damages, costs of suit herein, and attorney fees as a result of the wrongdoing alleged herein.

11. Prior to the acts and omissions complained of herein, SUHSD knew or should have known that retaliation of any kind, including whistleblower retaliation, violated public policies designed to prevent retaliation to protect employees, and the general public.

12. Prior to the acts and omissions complained of herein, SUHSD knew or should have known

1 that allowing unlawful retaliation of any kind, including retaliation in violation of the Labor
2 Code, violated public policies designed to prevent retaliation to protect employees, and the
3 general public.

4 13. SUHSD knew or should have known that they had a duty to train their employees to prevent
5 retaliation of any kind, including whistleblower retaliation.

6 14. SUHSD knew or should have known that they had a duty to supervise their employees to
7 prevent retaliation of any kind, including whistleblower retaliation.

8 15. SUHSD knew or should have known that they had a duty to ensure their employees were
9 qualified to prevent retaliation of any kind, including whistleblower retaliation.

10 16. SUHSD chose not to train their employees to prevent retaliation of any kind, including
11 whistleblower retaliation.

12 17. SUHSD chose not to supervise their employees to prevent retaliation of any kind, including
13 whistleblower retaliation.

14 18. SUHSD chose not to ensure their employees were qualified to prevent retaliation of any
15 kind, including whistleblower retaliation.

16 19. Plaintiff filed a claim with SUHSD's Legal Services Division on October 31, 2022. SUHSD
17 rejected her claim on November 7, 2022, attached hereto as Exhibit "A."

18 **SPECIFIC FACTUAL ALLEGATIONS**

19 20. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the
20 preceding paragraphs as though fully set forth herein.

21 21. Defendant SUHSD is a public school district that serves students in the cities of Chula Vista,
22 Imperial Beach, National City, and San Diego, all of which are located in San Diego
23 County, California.

24 22. On or about March 5, 2012, SUHSD hired Plaintiff as Director of Human Resources (HR) at
25 their headquarters at 1130 Fifth Ave, Chula Vista, CA 91911. Plaintiff resigned from her
26 position as an HR Officer for San Diego Unified School District to take the position with
27 SUHSD.

28 23. Throughout her employment, Plaintiff performed her job in a capable and competent

1 manner, as recognized by SUHSD. Plaintiff's performance evaluations were exemplary,
2 and SUHSD praised her for consistently performing to high standards in all aspects of her
3 job. The Association of Management Employees (MASD), affiliated with SUHSD, voted
4 Plaintiff District Administrator of the Year in 2016 and in 2022. The Association of
5 California School Administrators (ACSA) awarded Plaintiff Administrator of the Year in
6 2014.

7 24. As Director of HR, Plaintiff was in charge of planning, implementing, directing and
8 maintaining SUHSD's' certificated personnel services. Plaintiff also maintained staffing to
9 ensure that certificated personnel functions conformed to district, state, and federal
10 requirements, and provided staff assistance to the Chief Human Resources Officer (CHRO).

11 25. On August 5, 2019, Thomas Glover, then SUHSD Assistant Superintendent of HR, sent an
12 email to all HR employees recognizing Plaintiff for her "talented leadership and teaching
13 skills, engaging conversations, and job knowledge."

14 26. Between December 2019 and May 2020, Plaintiff complained to Glover and Jennifer
15 Carbuccia, SUHSD General Counsel, several times regarding SUHSD's implementation of
16 layoff procedures. Plaintiff observed that SUHSD chose to lay off, or not lay off, staff based
17 on management seniority dates that were incorrect pursuant to California Education Code
18 §44956.5. Plaintiff provided Carbuccia and Glover examples of staff with incorrect
19 management seniority dates, but they maintained that the incorrect dates were correct.

20 27. In or around September 2020, SUHSD appointed Eduardo Reyes as its new CHRO.

21 28. On or about October 27, 2020, Reyes promoted Luis Rodriguez, a personal friend of Reyes,
22 to an Assistant Principal position. While SUHSD customarily posted and advertised vacant
23 management positions, SUHSD neither posted nor advertised this position. The CHRO also
24 historically informed Plaintiff and other HR managers of proposed promotions beforehand
25 and verified that the employee held the appropriate credentials. Reyes did not always follow
26 this practice.

27 29. Upon learning of Reyes' promotion of Rodriguez, Plaintiff noticed that, according to the
28 California Commission on Teacher Credentialing website, Rodriguez did not hold the

1 Administrative Services Credential required by Cal. Ed. Code §44065 and Cal. Code Regs.
2 Tit. 5, §80054.5 for the Assistant Principal position. Plaintiff reported this fact to Reyes,
3 and Reyes simply stated that Rodriguez had told him he had the necessary credential.

4 30. In or around January 2021, Reyes administratively transferred Cesar Fernandez, a friend of
5 Reyes, to a Teacher on Special Assignment (TOSA) position, which conferred a higher pay
6 rate. Plaintiff had never seen this happen in her previous nine years as Director of HR.
7 Plaintiff complained to Reyes about the legality of this transfer because the position had not
8 been posted and open for consideration by all of the bargaining unit members in the
9 Sweetwater Educators Association (SEA) unit as required by the Collective Bargaining
10 Agreement (CBA). Reyes declined to explain this decision to Plaintiff.

11 31. Plaintiff was concerned that Reyes' transfer of Fernandez could be a conflict of interest, as
12 when Reyes later resigned as a Member of the Chula Vista Elementary School District
13 (CVESD) Board of Education so that he could apply to be the Superintendent of CVESD,
14 Fernandez replaced Reyes on the CVESD Board and voted to appoint Reyes as the
15 Superintendent.

16 32. Between August and November 2021, Plaintiff complained to Reyes and Pedroza about their
17 time reporting, as she was often the only HR manager in the office and attending scheduled
18 meetings.

19 33. In or around October or November 2021, Pedroza gave Plaintiff a speech about how she
20 understands the concept of "long live the king" and that she knows who pays her paycheck.
21 Plaintiff explained that taxpayers pay their paychecks. On Plaintiff's information and belief,
22 Pedroza gave this speech to other employees.

23 34. In or around November or December 2021, Plaintiff contacted Mabelle Glithero, the MASD
24 President, regarding the time reporting expectations for management, and informed Glithero
25 of the time improprieties in HR. Plaintiff disclosed that, on her information and belief,
26 Reyes and Pedroza were frequently absent and not deducting vacation time when they were
27 out of the office or on vacation. On Plaintiff's information and belief, when Reyes later left
28 his position to become Superintendent of CVESD, he was paid out for many hours of

1 vacation that he had willfully failed to deduct.

2 35. On or about January 13, 2022, Governor Gavin Newsom issued an Executive Order (EO)
3 allowing individuals who meet the Basic Skills Requirement, and who hold a Bachelor's or
4 higher degree and a valid Certificate of Clearance, to receive a Temporary County
5 Certificate (TCC) to serve as emergency substitute teachers.

6 36. Shortly after the issuance of this EO, Pedroza informed school site Principals that all Student
7 Teachers could now serve as emergency substitute teachers. Plaintiff reported to Pedroza
8 and Reyes that this decision overstepped the EO's bounds, as Student Teachers had not
9 necessarily met all of the legal requirements listed in the EO.

10 37. On or about February 3, 2022, MASD President Glithero met with Reyes in the presence of
11 Viky Mitrovich, Sessa Haynes, and Carlotta Love, three other District Administrators,
12 regarding the time reporting expectations and improprieties that Plaintiff had disclosed to
13 her. Reyes had cancelled on two previously schedule meetings with Glithero because he
14 was spending a lot of time out of the office, campaigning for the CVESD Superintendent
15 position.

16 38. On or about February 8, 2022, Carbuccia copied Pedroza on an email regarding the staffing
17 of teachers at the adult schools. Because Pedroza handled classified personnel matters and
18 Plaintiff handled certificated personnel matters, the content of this email was within
19 Plaintiff's scope of responsibility, not Pedroza's. However, Carbuccia did not copy Plaintiff
20 on the email.

21 39. On or about February 11, 2022, Superintendent Aguirre met with Plaintiff in the presence of
22 Ana Maria Alvarez, the Assistant Superintendent of Teaching and Learning, and informed
23 her that he would recommend her reassignment to another position. Aguirre told Plaintiff
24 that she needed to develop a "more collaborative leadership style."

25 40. Prior to this meeting with Aguirre, SUHSD had never criticized, or even mentioned,
26 Plaintiff's "leadership style." SUHSD did not provide Plaintiff any examples, incidents, or
27 complaints of her lacking a "collaborative leadership style" before or after Aguirre informed
28 her of his recommendation of reassignment.

- 1 41. On or about February 17, 2022, Pedroza gave Plaintiff a letter providing her notice of her
2 release from her position as Director of HR at the end of the 2021-2022 school year and her
3 reassignment to “another position within the scope of [her] credentials” at the beginning of
4 the 2022-2023 school year. The letter stated that the Governing Board adopted this
5 resolution at its meeting on February 14, 2022. However, the letter was dated February 11,
6 2022, indicating that it was drafted prior to the Board Meeting on February 14.
- 7 42. Upon receiving the letter, Plaintiff asked Pedroza for clarification about what “another
8 position within the scope of [her] credentials” meant. Pedroza asked Plaintiff for the letter
9 so that she could read it, and stated that she would need to obtain clarification from Aguirre.
- 10 43. SUHSD promoted Pedroza to CHRO to replace Reyes, who was leaving to become
11 Superintendent of CVESD, at the same Board Meeting on February 14.
- 12 44. In or around March or April 2022, Plaintiff contacted the San Diego County District
13 Attorney’s Public Integrity Unit. On or about April 6, 2022, Plaintiff disclosed the time
14 reporting improprieties in SUHSD’s HR Division in a phone interview with Deputy District
15 Attorney Leon Schorr and Investigator Ronald Drake. Plaintiff later met with Drake in
16 person to provide him with the evidence she had gathered to support her claims.
- 17 45. On or about April 28, 2022, Pedroza gave Plaintiff a letter clarifying the reason for her
18 release and reassignment to a “non-management/teaching position.” The letter stated that
19 the reason for Plaintiff’s reassignment was “a loss of confidence in [her] ability as the
20 District’s Director of Human Resources, and the District’s desire to seek a new
21 administrator to carry out the responsibilities of that position in a more collaborative
22 leadership style.”
- 23 46. Prior to this letter, SUHSD had never mentioned or made Plaintiff aware of their “loss of
24 confidence in [her] ability” as Director of HR. SUHSD did not provide Plaintiff any
25 examples, incidents, or complaints of her lacking an ability to perform her role before or
26 after SUHSD informed her of her release and reassignment.
- 27 47. The letter also stated that “the District believes this reassignment to the classroom, at this
28 time, is in the best interest of the District and the students it serves.” It is unclear why

1 SUHSD claimed the reassignment was in the best interest of students, as Plaintiff had never
2 held a teaching position for SUHSD and had not held a teaching position at all in over
3 twelve years. Additionally, while Plaintiff's prior teaching experience only included
4 elementary school grades, she was ultimately assigned to teach grades seven and eight.

5 48. SUHSD's reassignment of Plaintiff to a teaching position constitutes a significant demotion
6 of her employment, including a sharp reduction in salary and loss of reputation.

7 Considering SUHSD has released and reassigned several administrative staff who have
8 engaged in actual misconduct to other management-level positions, this was an extreme and
9 disparate action for SUHSD to take against Plaintiff.

10 49. SUHSD's demotion of Plaintiff to the position of Secondary Classroom Teacher was
11 effective July 1, 2022. Plaintiff remains employed by SUHSD in this position.

12 50. SUHSD retaliated against Plaintiff. SUHSD demoted Plaintiff to Secondary Classroom
13 Teacher because she refused to participate in illegal activity and because she disclosed
14 illegal conduct by SUHSD's management-level employees.

15 51. As a result of SUHSD's demotion, Plaintiff has suffered and continues to suffer emotionally
16 and economically.

17 52. On May 4, 2023, Plaintiff's counsel submitted her Complaint for Damages, Civil Case
18 Cover Sheet, and Summons for filing in San Diego Superior Court. On May 10, 2023, San
19 Diego Superior Court provided a "Notice of Rejection of Electronic Filing" stating that the
20 court received the filing on May 4, 2023, and "Per e-filing requirements all documents
21 containing exhibits must be bookmarked. Please correct and re-submit." Plaintiff has now
22 cured that insubstantial defect.

23 **CAUSE OF ACTION**

24 **RETALIATION**

25 **[Cal. Labor Code §§1102.5(b),(c) and (e)]**

26 53. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the
27 preceding paragraphs as though fully set forth herein.

28 54. At all times relevant herein, California Labor Code §1102.5 was in full force and effect and

1 binding on SUHSD.

2 55. California Labor Code §1102.5(b) prohibits employers from retaliating against an employee
3 for disclosing information the employee reasonably believes discloses a violation of law or
4 noncompliance with a regulation to a government agency, to a person with authority over
5 the employee, or to another employee who has the authority to investigate or correct the
6 violation or noncompliance.

7 56. California Labor Code §1102.5(c) prohibits employers from retaliating against an employee
8 for refusing to participate in an activity that would result in a violation of law or
9 noncompliance with a regulation.

10 57. California Labor Code §1102.5(e) provides that a report made by an employee of a
11 government agency to their employer is a disclosure of information to a government or law
12 enforcement agency pursuant to subdivisions (a) and (b).

13 58. Plaintiff refused to participate in illegal activity and disclosed illegal conduct by SUHSD's
14 management-level employees.

15 59. Defendants demoted Plaintiff.

16 60. Plaintiff believes and thereon alleges that her refusal to participate in, and disclosure of,
17 illegal activities was a motivating factor in SUHSD demoting Plaintiff.

18 61. As a direct, foreseeable, and proximate result of SUHSD's conduct, Plaintiff has sustained
19 and continues to sustain substantial losses in wages, reputation, promotions, and other
20 employment opportunities.

21 62. As a result of SUHSD's deliberate, outrageous, and despicable conduct, Plaintiff is entitled
22 to recover exemplary damages in an amount commensurate with each of SUHSD's wrongful
23 acts and sufficient to punish and deter future similar reprehensible conduct.

24
25 **WHEREFORE**, Plaintiff prays for the following relief:

- 26 1. For compensatory damages, including back pay, front pay, promotional
27 opportunities, benefits and other opportunities of employment, according to proof;
- 28 2. For special damages in an amount according to proof;

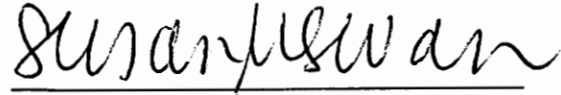
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- 3. For mental and emotional distress damages;
- 4. For civil penalties;
- 5. For costs of suit, including attorneys' fees as permitted by law, including those available pursuant to California Labor Code §1102.5(j);
- 6. For an award of interest, including prejudgment interest, at the legal rate as permitted by law;
- 7. For injunctive relief, including reinstatement, retroactive promotions, and retroactive seniority;
- 8. For such other and further relief as the Court deems proper and just under all the circumstances.

PLAINTIFF MILENA AUBRY demands a jury trial on all issues in this case.

DATED: May 15, 2023

SWAN EMPLOYMENT LAW



SUSAN M. SWAN
LAURA M. KELLEHER
PAUL C. HUFF
Attorneys for Plaintiff,
MILENA AUBRY

EXHIBIT A:
PLAINTIFF MILENA AUBRY'S SUHSD LEGAL SERVICES
DEPARTMENT CLAIM AND REJECTION LETTER

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CLAIMS AND ACTIONS AGAINST THE DISTRICT

Sweetwater

CLAIM FORM AGAINST Union High SCHOOL DISTRICT

Government Code Sections 910 and 910.2

Name of Claimant: MIL NA AUBRY
Address: 10 SWAN Employment Law, 42 W. Broadway, Ste. 1120
Phone Number: (day) 619. 32. 7935 (evening) _____
Date the injury/damage occurred: 28/22
Place the injury/damage occurred: Chula Vista, California San Diego CA

Describe how and under what circumstances the injury/damage occurred: Aubry opposed and complained about illegal and unethical conduct by District employees.

What particular action by the district and/or its employees caused the alleged damage or injury: (List employee name(s), if known): Superintendent Moises Ramirez demoted Aubry from Human Resources Director to teacher,

State the amount of the claim if it is less than \$10,000: \$ _____ i retaliation.

Include the estimated amount of any prospective injury, damage or loss insofar as it may be known at the time this claim is presented and list the basis for the computation of the amount claimed: Unknown at this time

If the dollar amount is more than 10,000, no dollar amount shall be stated but please indicate whether the claim is a limited civil claim (total dollar amount less than \$25,000):

Limited Civil Case: Yes _____ No X

Names, addresses and phone numbers of any witnesses, doctors, and hospitals: District employees Eduardo Reyes, Ana Maria Alvarez, Anna Pedriza

Warning: It is unlawful to knowingly present or cause to be presented any false or fraudulent claim for payment of a loss or injury. Penal Code 72 provides that a person who files such a claim may be guilty of a felony punishable by imprisonment and by a fine not exceeding \$10,000.

Signature: Sharon Swan Date: 1/26
Attorney for Mitena ly

Exhibit
version: November 17, 2008
revised: December 14, 2009
revised: February 16, 2010

SWEETWATER UNION HIGH SCHOOL DISTRICT
Chula Vista, California



SWEETWATER UNION HIGH SCHOOL DISTRICT

LEGAL SERVICES DIVISION

1130 Fifth Avenue
Chula Vista, CA 91911-2896

General Information:
Phone: (619) 407-4940
Fax: (619) 407-4949

www.sweetwaterschools.org

Jennifer Carbuccia General Counsel PH: (619) 407-4940	Susan Park Chief Compliance Officer PH: (619) 600-4900	Roberto Rodriguez Director of Labor Relations PH: (619) 600-4919	Jennifer Benavides Director of Risk Management PH: (619) 407-4900	Patrick Concepcion/ Kelly Perez Paralegals PH: (619) 585-6096/(619) 407-4935
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November 7, 2022

**Certified Mail USPS
Return Receipt Requested**

Milena Aubry
C/O Swan Employment Law
402 W. Broadway, Suite 1120
San Diego, CA 92101

Re: Claimant: Milena Aubry
Date of Loss: April 28, 2022

NOTICE OF ACTION OR REJECTION OF CLAIM
(Government Code Section 913)

NOTICE IS HEREBY GIVEN that the claim presented to the Sweetwater Union High School District on October 31, 2022, for the date of loss April 28, 2022, was rejected by the Director of Risk Management, as the governing board’s designee, on November 7, 2022.

Furnishing a rejection notice is a procedural step all public entities must take pursuant to Government Code Section 900 et seq. to commence the six-month statute of limitations pertaining to the filing of legal actions.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Sincerely,

Jennifer Benavides
Director of Risk Management

cc: Jennifer Carbuccia, SUHSD
Lisa Jensen, Risk Management JPA