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**F I L E D**  
Clerk of the Superior Court

CIVIL BUSINESS OFFICE 12  
CENTRAL DIVISION 9

DEC 11 2012

2012 DEC 11 P 3:27

By: \_\_\_\_\_ Deputy

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

4 Attorney for Plaintiffs, HECTOR MARTINEZ, GEORGE SILVA, MICHAEL GARROD, and  
5 MYRNA SILVA

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO, SOUTH COUNTY DIVISION**

10 HECTOR MARTINEZ, GEORGE SILVA, )  
11 MICHAEL GARROD, and MYRNA SILVA, )

Case No.: 37-2012-00087402-CU-OE-CTL

12  
13 Plaintiffs,

**COMPLAINT FOR DAMAGES FOR**  
**1. EMPLOYMENT DISCRIMINATION -**  
**RETAILIATION**  
**2. EMPLOYMENT DISCRIMINATION -**  
**FAILURE TO PREVENT**  
**DISCRIMINATION AND RETALIATION**  
**3. EMPLOYMENT**  
**DISCRIMINATION - RACIAL**  
**DISCRIMINATION**  
**4. EMPLOYMENT**  
**DISCRIMINATION - VIOLATION OF**  
**TITLE VII OF THE CIVIL RIGHTS**  
**ACT OF 1964**

14 vs.

15  
16 SWEETWATER AUTHORITY; AND DOES  
17 1 THROUGH 50 INCLUSIVE,

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19 Defendant(s).  
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23 Plaintiffs, HECTOR MARTINEZ, GEORGE SILVA, MICHAEL GARROD, and  
24 MYRNA SILVA, in their cause of action against Defendant, SWEETWATER AUTHORITY,  
25 hereby allege:

26 1. Plaintiffs, Hector Martinez, George Silva, Michael Garrod and Myrna Silva are,  
27 and at all times mentioned herein, were residents of San Diego County, California.  
28

1           2.       At all times herein defendant, Sweetwater Authority was a municipal corporation  
2 duly authorized to do and did transact business as a governmental municipality in San Diego  
3 County, State of California. Defendant was an "employer" as defined by *Government Code*  
4 §12926(d) that regularly employed 5 or more persons and/or was a governmental municipality.  
5 The true names and capacities, whether individual, corporate, associate or otherwise of  
6 defendants sued herein as Does 1 through 50 are currently unknown to plaintiffs who sue these  
7 defendants by these fictitious names. Plaintiff is informed and believes and thereupon alleges  
8 each defendant designated as a Doe was legally responsible in some manner for the events and  
9 happenings referred to herein and caused the injury and damage to plaintiffs as alleged herein.  
10 Plaintiffs will seek leave of court to amend this complaint to show the true names and capacities  
11 of defendants designated as a Doe when they have been ascertained.

12           3.       In 2008 plaintiff Hector Martinez filed a claim against defendant for racial  
13 discrimination. Plaintiffs Michael Garrod, George Silva and Myrna Silva participated in the  
14 investigation of racial discrimination against Hector Martinez.

15           4.       As a direct result of plaintiffs' participation in the discrimination claim, they were  
16 harassed and discriminated against. This included but was not limited to an article written by  
17 Sweetwater Authority General Manager Mark Rogers in *The Source*, an employee newsletter.  
18 Mr. Rogers makes reference to employees who are bullies, liars or cowards and should be  
19 recognized as thieves which plaintiffs are informed and believe was directed at them for their  
20 participation in the racial discrimination claim.

21           5.       Plaintiffs filed a claim against former General Manager Mark Rogers.  
22 Subsequently, plaintiffs sustained retaliation by defendant. This included but was not limited to  
23 being purposefully excluded from important company meetings as well as being passed over for  
24 promotions for positions that were given to obviously less qualified individuals. Further, since  
25 plaintiffs' claims, they have sustained significantly lower evaluations on performance reviews.

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1 **FIRST CAUSE OF ACTION**  
2 **EMPLOYMENT DISCRIMINATION – RETALIATION**

3 6. Plaintiffs reallege each and every paragraph of the complaint as if fully set forth  
4 herein.

5 7. During the course of their employment with defendant, plaintiff Hector Martinez,  
6 was subjected to retaliatory employment practices after filing a formal racial discrimination  
7 complaint. All plaintiffs, during the course of their employment with defendant were subjected  
8 to retaliatory employment practices after filing a formal harassment complaint.

9 8. As alleged herein, defendant retaliated against plaintiffs by adversely affecting the  
10 terms and conditions of their employment in violation of FEHA Cal. Gov. Code §12940(h).

11 9. Plaintiffs' retaliation claims are supported by defendant's conduct as described  
12 herein, including but not limited to plaintiffs being passed up for promotions they were qualified  
13 for which were filled by less qualified individuals.

14 10. As a direct, foreseeable and proximate result of the aforementioned conduct by  
15 defendant, plaintiffs have suffered and continue to suffer, losses in earnings, earning capacity  
16 and other benefits of employment, all in an amount yet to be ascertained.

17 11. As a proximate result of defendant's willful, knowing and intentional  
18 discrimination and retaliation, plaintiffs have suffered and continue to suffer humiliation and  
19 emotional distress in an amount according to proof at trial.

20 12. Plaintiffs are informed and believe and thereupon allege that the actions of  
21 defendant as hereinabove alleged was willful, wanton, malicious and oppressive, and done with  
22 knowledge that its conduct was unlawful. Notwithstanding such knowledge, defendant  
23 despicably subjected plaintiffs to cruel and unjust hardship in conscious disregard of plaintiffs'  
24 rights as hereinabove alleged. Plaintiffs are thus entitled to punitive and exemplary damages in  
25 an amount sufficient to discourage such future conduct by defendant, and at the Court's  
26 discretion.

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**SECOND CAUSE OF ACTION  
EMPLOYMENT DISCRIMINATION – FAILURE TO PREVENT  
DISCRIMINATION AND RETALIATION**

13. Plaintiffs reallege each and every paragraph of the complaint as if fully set forth herein.

14. Pursuant to Gov. Code §12940, et. seq., an employer has a duty to take reasonable steps to prevent discrimination based on harassment and retaliation based on participation in a protected activity.

15. Defendant violated its duty under Gov. Code §12940, et. seq. by failing to engage all reasonable measures to prevent the harassment and retaliation perpetuated against plaintiffs, and to prevent the creation of a hostile work environment.

16. Defendant knew or should have known, about the harassment and retaliation. Defendant was repeatedly advised of the harassment and retaliatory actions being perpetuated against plaintiffs. Despite said knowledge, defendant failed and refused to take immediate and appropriate corrective action to prevent the hostile work environment alleged herein.

17. Plaintiffs' claim of failure to prevent harassment and retaliation is supported by defendant's actions alleged herein.

18. As a result of defendant's failure to take all reasonable steps to prevent harassment and retaliation in violation of FEHA, Plaintiffs have suffered and continue to suffer damages, including severe emotional distress, in an amount to be proven at trial.

19. As a proximate result of the wrongful acts of defendant, plaintiffs have suffered actual, consequential and incident financial losses, including without limitation, loss of employment-related opportunities for growth, in an amount according to proof at time of trial.

20. As a proximate result of the wrongful acts of defendant, plaintiffs have suffered and continue to suffer emotional distress, mental anguish, shame, embarrassment, and injury to reputation and are entitled to damages in an amount according to proof at trial.

21. The actions being taken against plaintiffs and the hostile work environment they are forced to endure in order to work at Sweetwater Authority are carried out by and/or ratified

1 by defendant. Defendant is acting in such a despicable, oppressive, malicious, deliberate,  
2 egregious, and inexcusable manner that it causes injury and damage to plaintiffs, thereby  
3 justifying and award of punitive damages in an amount sufficient to discourage future actions by  
4 defendant and others.

5  
6 **THIRD CAUSE OF ACTION**  
7 **EMPLOYMENT DISCRIMINATION – RACIAL DISCRIMINATION**

8 22. Plaintiffs reallege each and every paragraph of the complaint as if fully set forth  
9 herein.

10 23. Pursuant to the California Fair Employment and Housing Act, Government Code  
11 Sections 12900, et seq., defendant owed Plaintiffs a duty to take all reasonable action to prevent  
12 and correct discrimination and retaliation in the workplace and to provide Plaintiffs and other  
13 employees with a work environment free from discrimination and retaliation.

14 24. The conduct of defendants, and each of them, as set forth above and below,  
15 constitutes unlawful race discrimination and retaliation in violation of the California Fair and  
16 Housing Act, Government Code Sections 12900 et seq., which codifies the state's public policy.

17 25. Defendant discriminated against Plaintiff Hector Martinez because of his Race.  
18 Specifically, defendant fostered a work environment and promoted discriminatory practices  
19 against people of color, to wit, minorities. Plaintiff Hector Martinez is a Hispanic-American and  
20 a member of a protected class. Defendant outrageously engaged in retaliation when Plaintiff  
21 Hector Martinez, as well as Plaintiffs George Silva, Michael Garrod, and Myrna Silva, opposed,  
22 objected to and complained of Defendant's discriminatory practice. Plaintiffs were performing  
23 competently in the positions they held. The circumstances leading to plaintiffs' being passed  
24 over for promotions were motivated by unlawful race discrimination and retaliation.

25 26. Defendant's conduct by engaging in, fostering, promoting, and condoning race  
26 discrimination in the work place, as set forth above, constitutes a violation of California's  
27 fundamental public policy against such unlawful discrimination and retaliation.

1           27.     As a direct and proximate result of defendant’s conduct in violation of  
2 California's public policy against race discrimination and retaliation, as set forth above, Plaintiffs  
3 have suffered severe humiliation and embarrassment, anxiety, distress, loss of self-esteem and  
4 other highly unpleasant emotions. Further, Plaintiffs suffered injuries to their reputation, and  
5 have been forced to employ legal counsel and to incur attorney's fees, costs of suit and related  
6 expenses in an amount not yet fully ascertained.

7           28.     In engaging in the conduct set forth above, and in failing to act, as set forth above,  
8 Defendant has acted intentionally, negligently, recklessly, outrageously, despicably, maliciously,  
9 oppressively, fraudulently, and in bad faith, with the intent of harming Plaintiffs and without  
10 regard to their rights. Accordingly, Plaintiffs are entitled to recover exemplary damages.

11  
12   **FOURTH CAUSE OF ACTION**  
13           **EMPLOYMENT DISCRIMINATION – VIOLATION OF TITLE VII OF THE CIVIL**  
14   **RIGHTS ACT OF 1964**

15           29.     Plaintiffs reallege each and every paragraph of the complaint as if fully set forth  
16 herein.

17           30.     Pursuant to Title VII of the Civil Rights of 1964 (“Title VII”), 42 U.S.C. Section  
18 2000e et seq., Defendant, as Plaintiffs’ employer, owed Plaintiffs a duty to take reasonable action  
19 to provide them with a workplace free from racial discrimination and retaliation. In breach of its  
20 duties under Title VII, Defendant discriminated against Plaintiff Hector Martinez because of his  
21 race and retaliated against all Plaintiffs for objecting to and complaining about racial  
22 discrimination in the workplace. Plaintiffs were subjected to unwelcome racial jokes, conduct  
23 and comments by their supervisor and co-worker. The discrimination was based on race, as  
24 Hector Martinez is Hispanic-American. The discrimination was severe and pervasive and altered  
25 the conditions of Plaintiffs’ employment and created an abusive working environment. The  
26 abusive working environment caused by the racial discrimination and retaliation became so  
27 intolerable that Plaintiffs complained to Defendant about the discrimination and retaliation and  
28 Defendant knew and should have known about the discrimination and retaliation and failed to

1 take prompt and effective remedial action and effectively authorized, condoned and ratified the  
2 discrimination and retaliation.

3 31. As a direct and proximate result of the conduct of Defendant in violation of Title  
4 VII's policy against discrimination, harassment and retaliation, as set forth above, Plaintiffs have  
5 suffered severe humiliation and embarrassment, anxiety, distress, loss of self-esteem and other  
6 highly unpleasant emotions. Further, Plaintiffs suffered injuries to their reputation, and have  
7 been forced to employ legal counsel and to incur attorney's fees, costs of suit and related  
8 expenses in an amount not yet fully ascertained.

9 32. In engaging in the conduct set forth above, and in failing to act, as set forth above,  
10 Defendant acted intentionally, negligently, recklessly, despicably, maliciously, oppressively,  
11 fraudulently, and in bad faith, with the intent of harming Plaintiffs and without regard to  
12 Plaintiffs' rights. Accordingly, Plaintiffs are entitled to recover exemplary damages.

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1           **WHEREFORE**, Plaintiffs, Hector Martinez, George Silva, Michael Garrod, and Myrna  
2 Silva pray judgment against Defendant, Sweetwater Authority, as follows:

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- 4           1.     For medical and incidental expenses, past and future;
- 5           2.     For lost earnings and loss of career opportunities, past and future;
- 6           3.     For general compensatory damages, past and future;
- 7           4.     For prejudgment interest to the extent permitted by law;
- 8           5.     For attorneys' fees and costs incurred pursuant to Government Code Section  
9 12965(b) and to the extent otherwise permitted by law;
- 10          6.     For punitive damages pursuant to Civil Code Section 3294, et. seq. to the extent  
11 permitted by law as to those individual defendants identified herein; and
- 12          7.     For such other and further relief as this Court may deem just and proper.
- 13

14 DATED: 12.7.12

LAW OFFICES OF ELLIOTT N. KANTER



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Elliott N. Kanter, Esq.  
Attorney for Plaintiffs, HECTOR MARTINEZ,  
GEORGE SILVA, MICHAEL GARROD, and  
MYRNA SILVA



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5 Attorney for Plaintiffs, HECTOR MARTINEZ, GEORGE SILVA, MICHAEL GARROD, and  
MYRNA SILVA

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO, SOUTH COUNTY DIVISION**

HECTOR MARTINEZ, GEORGE SILVA, ) Case No.:  
MICHAEL GARROD, and MYRNA SILVA )  
Plaintiffs ) **NOTICE OF LODGEMENT IN SUPPORT  
OF THE COMPLAINT**  
vs. )  
SWEETWATER AUTHORITY; AND DOES 1 )  
THROUGH 50, INCLUSIVE, )  
Defendant(s). )

Plaintiffs Hector Martinez, George Silva, Michael Garrod and Myrna Silva hereby provide  
notice of lodgment of the following documents in support of Plaintiff's Complaint, attached  
hereto as follows:

1. Exhibit "A": A true and correct copy of Hector Martinez's Notice of Case Closure  
and Right to Sue (#48657-23270).
2. Exhibit "B": A true and correct copy of George Silva's Notice of Case Closure and  
Right to Sue (#68060-32104).

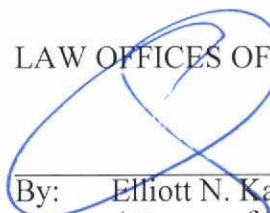
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- 3. Exhibit "C": A true and correct copy of Michael Garrod's Notice of Case Closure and Right to Sue (#68083-32109)
- 4. Exhibit "D": A true and correct copy of Myrna Silva's Notice of Case Closure and Right to Sue (#68071-32106).

LAW OFFICES OF ELLIOTT N. KANTER

DATED: 12-7-12

  
By: Elliott N. Kanter, Esq.  
Attorneys for Plaintiffs,  
HECTOR MARTINEZ, GEORGE  
SILVA, MICHAEL GARROD, and  
MYRNA SILVA

# EXHIBIT

# A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR PHYLLIS W. CHENG

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
(800) 884-1684 | Videophone (916) 226-5285 | TDD (800) 700-2320  
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

Dec 05, 2012

Hector Martinez  
1066 Florido Plaza  
Chula Vista, CA 91910

RE: 48657-23270 - Martinez Hector - Right To Sue

Notice of Case Closure and Right to Sue

Dear Hector Martinez:

This letter informs you that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective Dec 05, 2012 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

Department of Fair Employment and Housing

cc: James Smyth, Agent for Service for Sweetwater Authority

# EXHIBIT

# B



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR PHYLLIS W. CHENG

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www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

Dec 05, 2012

George Silva  
14275 Hillside Dr.  
Jamul, CA 91935

RE: 68060-32104 - Silva George - Right To Sue

Notice of Case Closure and Right to Sue

Dear George Silva:

This letter informs you that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective Dec 05, 2012 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

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DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

Department of Fair Employment and Housing

cc: James Smyth, Agent for Service for Sweetwater Authority

EXHIBIT  
C



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR PHYLLIS W. CHENG

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www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

Dec 05, 2012

Michael Garrod  
5604 Loping Lane  
Bonita, CA 91902

RE: 68083-32109 - Garrod Michael - Right To Sue

Notice of Case Closure and Right to Sue

Dear Michael Garrod:

This letter informs you that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective Dec 05, 2012 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

Department of Fair Employment and Housing

cc: James Smyth, Agent for Service for Sweetwater Authority



EXHIBIT  
D



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR PHYLLIS W. CHENG

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(800) 884-1684 | Videophone (916) 226-5285 | TDD (800) 700-2320  
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

Dec 05, 2012

Myrna Silva  
14275 Hillside Dr.  
Jamul, CA 91935

RE: 68071-32106 - Silva Myrna - Right To Sue

Notice of Case Closure and Right to Sue

Dear Myrna Silva:

This letter informs you that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective Dec 05, 2012 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

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Sincerely,

Department of Fair Employment and Housing

cc: James Smyth, Agent for Service for Sweetwater Authority

1 ELLIOTT N. KANTER, ESQ.  
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3 2445 5TH AVENUE, SUITE 350  
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6 FACSIMILE 619-234-4553

7 Attorney for Plaintiffs, HECTOR MARTINEZ, GEORGE SILVA, MICHAEL GARROD, and  
8 MYRNA SILVA

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF SAN DIEGO, SOUTH COUNTY DIVISION**

11 HECTOR MARTINEZ, GEORGE SILVA, ) Case No.:  
12 MICHAEL GARROD, and MYRNA SILVA )  
13 Plaintiffs ) **STATEMENT OF DAMAGES**  
14 vs. )  
15 SWEETWATER AUTHORITY; AND DOES 1 )  
16 THROUGH 50, INCLUSIVE, )  
17 Defendant(s). )

18 Pursuant to California Code of Civil Procedure Section 425.11, Plaintiff hereby states as  
19 follows:

20 General damages consisting of loss from employment discrimination, failure to prevent  
21 employment discrimination, racial discrimination, and violation of Title VII (The Civil Rights Act  
22 of 1964), as described in the Complaint on file herein in the amount of \$10,000,000.00.

23 Special damages according to proof.

24 Dated: 12-7-12

LAW OFFICES OF ELLIOTT N. KANTER

25  
26  
27 Elliott N. Kanter  
28 Attorney for Plaintiffs, HECTOR MARTINEZ,  
GEORGE SILVA, MICHAEL GARROD, and  
MYRNA SILVA