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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

10
11 SENATOR JOSEPH DUNN (Ret.),
12 Executive Director of the State Bar of
California; and WHISTLEBLOWER DOES
1-7,

13 Plaintiff,

14 vs.

15
16 THE STATE BAR OF CALIFORNIA;
17 CRAIG HOLDEN, an individual; BETH
JAY, an individual; and ROES 2-50,
inclusive,

18 Defendants.

Case No. BC563715

**FIRST AMENDED COMPLAINT
FOR DAMAGES**

1. WHISTLEBLOWER LIABILITY
AND RETALIATION
2. BREACH OF FIDUCIARY DUTY
3. BREACH OF FIDUCIARY DUTY -
LEAK
4. INTENTIONAL INTERFERENCE
WITH CONTRACTUAL
RELATIONS

DEMAND FOR JURY TRIAL

*Assigned for all purposes to the
Honorable Mitchell L. Beckloff*

Complaint Filed: November 13, 2014
Trial Date: April 12, 2016

23
24 **SUMMARY OF FIRST AMENDED COMPLAINT**

25 1. Plaintiff Senator Joseph Dunn (Ret.) and Whistleblower DOES 1-7 are
26 compelled to bring this First Amended Complaint for Damages ("FAC") following the
27 discovery of troubling new information regarding, and confirming, the State Bar's retaliation
28 against Senator Dunn and whistleblower DOES 1-7. Specifically, the FAC provides newly

1 discovered information regarding (a) the involvement of retired annuitant and Defendant
2 Beth Jay who intentionally interfered with Senator Dunn's contractual position as the
3 Executive Director of the State Bar of California, (b) conduct following Senator Dunn's
4 unlawful removal as Executive Director by certain State Bar Board of Trustee ("BOT")
5 Members who intentionally and illegally leaked to the media baseless allegations from a
6 confidential Munger Tolles & Olson LLP report and who have refused to cooperate with a
7 State Bar investigation identifying the sources of the leak, (c) conduct following Senator
8 Dunn's unlawful removal as Executive Director by the State Bar's Chief Trial Counsel Jayne
9 Kim, Robert Hawley, and their agents, who have retaliated against numerous other State Bar
10 employees and executives to cover up the serious malfeasance identified in Plaintiffs'
11 original complaint, and (d) conduct following Senator Dunn's unlawful removal as
12 Executive Director by Defendant Craig Holden who has recently attempted to create poison
13 pills to forever prevent the sale of the State Bar's San Francisco headquarters.

14 2. On April 22, 2015, Plaintiffs, through counsel, provided notice under Code of
15 Civil Procedure Section 472 of their intent to file this FAC in response to Defendants'
16 pending motion to compel arbitration and Defendants' demurrer, scheduled for May 5, 2015.
17 The new allegations identified in the FAC relate to an additional party, Defendant Beth Jay,
18 who is not affiliated with the State Bar. Further, the new information in the FAC relates to
19 conduct entirely unrelated to Senator Dunn's employment. The presently set motion to
20 compel arbitration and demurrer are therefore moot. California Code of Civil Procedure
21 Section 472 states:

22 Any pleading may be amended once by the party of course, and
23 without costs, at any time before the answer or demurrer is filed, or
24 after demurrer and before the trial of the issue of law thereon, by
25 filing the same as amended and serving a copy on the adverse party,
26 and the time in which the adverse party must respond thereto shall
27 be computed from the date of notice of the amendment.
28

1 3. The FAC substitutes Defendant Beth Jay for Defendant ROE 1 in the original
2 Complaint.

3 4. Defendant Beth Jay is a retired annuitant, and former principal counsel to the
4 Chief Justice of the California Supreme Court. Consistent with her historical pattern of
5 interfering with State Bar affairs without any constitutional, statutory, or other authority, it
6 has been discovered that Defendant Beth Jay intentionally interfered with Senator Dunn's
7 employment with the State Bar by meeting with certain BOT members and State Bar staff to
8 urge the termination of Senator Dunn, and as part of that, by spreading blatantly false
9 information concerning Senator Dunn to certain BOT members (as more fully set forth in
10 paragraphs 24 and 61 through 64, below).

11 5. The FAC is also required to be filed based on the tortious and unlawful
12 conduct by certain BOT members who purposefully, unethically, and unlawfully leaked to
13 the press allegations from an admittedly confidential employment report prepared by the
14 Munger Tolles firm. Senator Dunn to this day has not received any opportunity to review
15 any portion of the report or respond to the specious allegations. Munger Tolles warned all
16 BOT members who received the report that revealing any part of the report could lead to
17 disbarment.

18 6. Following the unlawful leak, the State Bar began a formal investigation into
19 the source(s) of the unlawful leak. However, certain BOT members have (a) refused to sign
20 a declaration under penalty of perjury stating they were not the source of the leak, (b) refused
21 to turn over phone records from the date of the leak, and (c) refused to turn over the copy of
22 the report they received since it contains a seal that would help identify them as the source of
23 the leak. California Business and Professions Code Section 6068(i), a robust enforcement
24 tool used by the State Bar against all State Bar members, mandates cooperation with State
25 Bar investigations. Therefore, certain BOT members are presently in violation of the
26 cardinal rule of State Bar investigations which mandates cooperation.

27 7. The FAC is also required to be filed based on newly discovered facts regarding
28 the improper and inappropriate conduct of Ms. Kim and Defendant Holden.

1 8. Specifically, since Senator Dunn's original complaint was filed shedding light
2 on Ms. Kim's conduct, Ms. Kim has attempted to deflect blame on a data analyst working
3 under her at the time to deflect her own perfidy. This analyst was solely tasked with
4 following directions from Ms. Kim and attempted to warn others about Ms. Kim's conduct.
5 Further, while the State Bar has purported to conduct an "independent OCTC investigation"
6 into the conduct by Ms. Kim, it has been discovered that the lawyer running the so-called
7 "independent investigation" is actually a defense expert retained by the law firm representing
8 Defendants in this very action. The so-called "independent investigation" is nothing more
9 than a whitewash of Jayne Kim's unprofessional conduct and to retaliate against those within
10 the State Bar who have exposed Jayne Kim's illegal, unprofessional, and unethical conduct.

11 9. Last, the FAC is required to be filed because it has been discovered since the
12 filing of Senator Dunn's original complaint that Defendant Holden has engaged in a
13 campaign to derail the sale of the State Bar's San Francisco headquarters. Specifically, it has
14 been learned that Defendant Holden has a plan to lien the San Francisco property, falsely
15 claiming urgent needs to make property improvements and repairs, that is in effect nothing
16 more than a poison pill plan to scuttle any sale of the property which could have led to the
17 State Bar realizing millions of dollars in equity which could be used to defray membership
18 costs and to support its core functions.

19 10. Since Senator Dunn filed his whistleblower lawsuit on November 15, 2014, the
20 State Bar has bizarrely doubled down on its efforts favoring retaliation over reform and
21 accountability. With a continued heavy heart, Senator Dunn has been compelled to file this
22 FAC.

INTRODUCTION

11. Senator Dunn, the Executive Director of the State Bar of California, and Whistleblower DOES 1-7 bring this whistleblower action and demand for injunctive relief against the State Bar of California based on the State Bar's unilateral termination of Senator Dunn's employment on November 7, 2014, immediately after Senator Dunn, and other

1 whistleblowers, through counsel, lodged two whistleblower notices with the State Bar's
2 Board of Trustees on November 3, 2014 and November 5, 2014.

3 12. Senator Dunn's whistleblower notices identified serious ethical breaches,
4 prosecutorial lapses, and fiscal improprieties by State Bar President Craig Holden, certain
5 BOT members, and Chief Trial Counsel and head of the State Bar's Office of the Chief Trial
6 Counsel ("OCTC") Jayne Kim, which were being concealed from the public.

7 13. The conduct Senator Dunn complained about included (1) the unlawful
8 intentional manipulation and false reporting of backlog cases, (2) the intentional lack of
9 prosecutorial efforts to proactively investigate and prosecute "notario" and lawyer fraud as
10 envisioned by the Legislature in passing Assembly Bill 1159, and (3) the conflicted retention
11 of Munger Tolles with close ties to a BOT member in violation of State Bar protocol to
12 evaluate a complaint against undisclosed targets and, upon information and belief, against
13 Senator Dunn. Holden, and a small group of BOT members, hired Munger Tolles outside of
14 established protocol, leading to a bill that is likely in excess of \$300,000.00. Even with this
15 unnecessary and exorbitant cost to members of the State Bar, the BOT only decided to
16 terminate Senator Dunn *without cause*.

17 14. Since becoming the Chief Executive of the State Bar in 2010, Senator Dunn
18 received consistent high praise and positive performance reviews in his formal performance
19 evaluations from 2011-2013. In fact, Senator Dunn's performance was determined to be so
20 excellent by the State Bar that he received bonuses substantially above his yearly salary
21 during the years 2011-2013.

22 15. In September 2014, attorney Craig Holden was installed as the new President
23 of the State Bar. In May 2014, Holden was the only announced candidate, so it was clear he
24 would be elected State Bar President. Starting in May, Holden told several people he was
25 determined "to do something about Dunn," with the clear implication that he was determined
26 to have him fired. The events described below gave Holden the pretext to begin a process
27 leading to Senator Dunn's termination. Finally, after Senator Dunn sent his whistleblower
28

1 notice, Holden demanded the BOT to terminate Senator Dunn, but even then only "without
2 cause."

3 16. Defendant Craig Holden was installed as President of the State Bar in
4 September 2014. Defendant Craig Holden, now a partner at Lewis Brisbois Bisgaard &
5 Smith LLP, is an attorney that has had difficulties in previous law firms and who submitted
6 irregular expense reports to the State Bar.

7 17. In addition to the termination of Senator Dunn, the State Bar has targeted
8 numerous other Whistleblower DOES with various degrees of discipline and retaliation
9 because they corroborated and identified the same conduct Senator Dunn complained of and
10 joined in the whistleblower notices to the State Bar.

11 18. Under the leadership of Holden, the BOT has engaged in an effort to purge the
12 ranks of whistleblowers at the State Bar who were aware of and complained about the
13 conduct of the BOT, President Holden, and other ROE Defendants.

14 19. On Friday, November 7, 2014, at approximately 5:00 p.m., while giving a
15 speech for the State Bar in San Francisco, Plaintiff Senator Dunn received a termination
16 letter from Defendant President Holden. The termination letter demanded that Senator Dunn
17 not speak with the press or public if he desired to negotiate a "mutually acceptable
18 [severance] agreement."

19 20. Senator Dunn brings this whistleblower action to protect the public integrity of
20 the Defendant State Bar, to overturn the illegally motivated decision to terminate his
21 employment, and to vindicate his rights as a whistleblower.

22 PARTIES

23 21. Senator Joseph Dunn (Ret.) is a former California State Senator who
24 represented California's 34th Senate District in Orange County, California. Senator Dunn
25 was appointed as Executive Director of the State Bar of California on November 22, 2010.
26 Senator Dunn served in this capacity as the State Bar's chief executive officer from
27 November 22, 2010 through his termination on November 7, 2014. Senator Dunn is a
28 resident of Orange County, California.

1 22. “The State Bar of California is a public corporation. Every person admitted and
2 licensed to practice law in this State is and shall be a member of the State Bar except while
3 holding office as a judge of a court of record.” (Cal. Const., art VI, § 9.) Under pain of
4 criminal punishment, no person may practice law in California unless he is an active member
5 of the State Bar. (Cal. Bus. & Prof. Code §§ 6125-6126.) The Board of Trustees of the State
6 Bar, upon authorization from the Legislature, fixes and imposes an annual membership fee
7 upon members of the State Bar. (*Id.* § 6140.) The fees are paid into the treasury of the State
8 Bar, and become part of its funds. (*Id.* § 6144.) The State Bar acts through the Board of
9 Trustees of the State Bar of California. The Board of Trustees makes rules of procedure,
10 regulates and operates the State Bar. The State Bar maintains its central offices at 845 South
11 Figueroa Street, Los Angeles, California 90017 and 180 Howard Street, San Francisco,
12 California 94105.

13 23. Defendant Craig Holden was installed as President of the State Bar in
14 September 2014 and is also a current partner at Lewis Brisbois Bisgaard & Smith LLP.
15 Defendant Holden resides in Los Angeles County, California. Craig Holden is sued herein in
16 his individual capacity.

17 24. Defendant Beth Jay is a retired annuitant and former principal attorney to the
18 Chief Justice of the Supreme Court of California. Despite having no authority over the
19 affairs of the State Bar of California, Defendant Beth Jay has repeatedly attempted to assert
20 authority and control over the business affairs and leadership decisions within the State Bar
21 of California. Specifically, as alleged in further detail below, Defendant Beth Jay acted
22 outside her authority when she intentionally interfered with Senator Dunn’s employment as
23 Executive Director by causing a false and unsubstantiated internal complaint to be filed
24 against Senator Dunn and by seeking the support of certain BOT Members to terminate
25 Senator Dunn. Upon information and belief, Defendant Beth Jay resides in San Francisco,
26 California.

27 25. ROES 2-50 are trustees and employees of the State Bar who acted in concert
28 with the named Defendants by, among other conduct, (a) unlawfully retaliating against

1 Senator Dunn for asserting rights and redress as a whistleblower (b) unlawfully leaking a
2 confidential report to the media, and (c) continuing to cover up the unlawful leak by, among
3 other acts, unethically refusing to to cooperate with a pending State Bar investigation which
4 is a standalone violation of the California Rules of Professional Conduct .

5 **JURISDICTION AND VENUE**

6 26. The Court has personal jurisdiction over the Defendants because they are
7 residents of and/or are doing business in the State of California.

8 27. Venue is proper in this county in accordance with Section 395(a) of the
9 California Code of Civil Procedure because the Defendants, or some of them, reside in this
10 county and the injuries alleged herein occurred in this county.

11 28. This Court has jurisdiction over the present matter because as delineated in the
12 Complaint, the nature of the claims and amount in controversy meet the requirements for
13 jurisdiction in the Superior Court of Los Angeles County.

14 **NOTICE OF CLAIM**

15 29. The State Bar has consistently, and historically, waived any purported
16 prerequisite that an aggrieved party bringing a lawsuit against it is required to submit notice
17 under California Government Code Section 910.

18 30. Moreover, the claims alleged in this action are outside the scope of the State
19 Bar Claim Form (last revised November 2005). The claim form provides only for potential
20 actions against "State Bar employees." (Form, §13). The named Defendants in the FAC are
21 not State Bar employees but third-party elected members of the State Bar.

22 31. Further, any purported notice requirement was satisfied before Plaintiffs' filed
23 their original complaint. Specifically, on November 7, 2014, Defendant Holden sent a letter
24 to Senator Dunn providing that litigation was anticipated and that the State Bar retained
25 outside counsel in connection with Senator Dunn's removal as Executive Director. On the
26 same date, Defendants issued a litigation hold notice to Senator Dunn. Defendants were
27 therefore on notice of potential litigation against it.

STATEMENT OF FACTS

Senator Dunn's Appointment as Executive Director

33. In 2009, the California Bureau of State Audits conducted a complete audit of the State Bar's disciplinary system. The Bureau highlighted the backlog reporting process and shined light on the failure of the State Bar to include all backlog cases in the annual discipline report. The report called for more transparency in the reporting of backlog cases to give stakeholders a clear picture of the State Bar's effectiveness. The Audit Report criticized: "By not reporting consistently and including all pertinent information, the State Bar is limiting its stakeholders' and the Legislatures ability to measure the effectiveness of the discipline system."

34. Senator Dunn was appointed as Executive Director in 2010, in the wake of this highly critical audit, with the directive to reform the State Bar by bringing fiscal responsibility and transparency to the State Bar's reporting obligations. The Executive Director functions as the chief executive officer for the State Bar and oversees all employees. The Executive Director is the only employee directly hired by the BOT and the Executive Director reports directly to the BOT. All other State Bar employees report directly to the Executive Director, with the exception of the head of the OCTC—responsible for prosecuting grievances in the State Bar Court—who exercises a quasi-independent function based on the unique appointment process which requires direct BOT approval and Senate confirmation. The head of the OCTC is Jayne Kim.

35. Senator Dunn succeeded in bringing important reforms to the State Bar. For example, Senator Dunn brought the investigative backlog on open complaints with the State Bar to near zero in 2011 after years of criticism from the legislature on the size of the backlog. Senator Dunn oversaw the purchase, remodel, and move in to the State Bar's new

1 home at 845 South Figueroa Street. Working with the Chief Financial Officer, Senator Dunn
2 stabilized the State Bar's budget with no new increase in mandatory dues under his
3 leadership. Senator Dunn created an external relations team to proactively advance the
4 public protection mission of the State Bar. This includes outreach to other State regulatory
5 bodies, law enforcement, the consulate community, religious communities, labor unions, and
6 others. Senator Dunn is also credited with substantially improving relations between the
7 Legislature and the State Bar including launching joint town halls with other regulatory
8 partners through the district offices of legislators. Senator Dunn also created a small
9 working group that met regularly to develop proposals to increase funding for legal services
10 in California.

11 36. In all his years as Executive Director of the State Bar, Senator Dunn received
12 glowing performance reviews. All of Senator Dunn's formal performance reviews from
13 2011-2013 were positive leading the State Bar to award him substantial yearly bonuses in
14 addition to his salary.

15 37. Senator Dunn's written employment agreement, initially set for a three year
16 term, was renewed in 2013 for a subsequent three-year term through 2016. However,
17 Senator Dunn was given notice of termination on November 7, 2014, just one year into his
18 new term as Executive Director. The termination was "without cause."

19 38. As discussed below, Senator Dunn had learned of egregious improprieties
20 being committed by certain BOT members, by Chief Trial Counsel Jayne Kim, by Holden
21 and by retired annuitant Beth Jay. When Senator Dunn raised these concerns with other
22 whistleblowers, which called to task the State Bar's core functions and competencies,
23 Senator Dunn was targeted by Holden who has attempted to cover up for the malfeasance
24 that was reported. Holden initiated an "evaluation" of certain executive employees at the
25 State Bar including Senator Dunn and tasked Munger Tolles, outside of protocol, to
26 investigate Senator Dunn and those executive employees.

Ethical Breaches – Unlawful Removal of Backlog

39. Senator Dunn was one of the whistleblowers within the State Bar who reported that Chief Trial Counsel Jayne Kim unlawfully removed backlog cases from the official reports released to the BOT and the public. This was done to benefit Ms. Kim in her upcoming evaluation and to fraudulently inflate the productivity of her office.

40. It was uncovered that at Ms. Kim's direction, internal reports were altered to unlawfully remove cases from the statutory backlog.

41. Ms. Kim then issued false reports which she sent to the Regulation Admissions & Discipline ("RAD") Committee of the State Bar as well as to members of the State Bar and the public through the State Bar's website.

42. The integrity of the State Bar's discipline reports to the Legislature and Governor depend on the integrity of OCTC self-reporting to RAD. Jayne Kim's conduct in removing backlog, to fraudulently boost the appearance of productivity by her office, compromised the integrity and accountability of OCTC.

43. Additionally, as further discussed herein, following Senator Dunn exposing Jayne Kim's conduct, Jayne Kim, with assistance of others, has engaged in efforts to deflect blame on to others, including innocent data analysts, who followed Jayne Kim's explicit directives. Multiple internal grievances and internal complaints are now pending against Jayne Kim, and others, for their conduct and their attempted cover up following Senator Dunn filing his initial whistleblower Complaint which brought her blatant misconduct to the public's attention.

44. Ms. Kim's conduct did not involve a few isolated incidents but was shockingly rampant. In her reports to the RAD Committee on September 30, 2013, Ms. Kim unlawfully removed approximately 200 cases from the internal reports. She then used the altered internal reports to prepare her official quarterly report which was sent to the RAD Committee and posted on the State Bar website for public consumption. The information in the public reports was false and misleading due to Ms. Kim's unlawful removal of cases from the backlog reports.

1 45. The State Bar server that houses the backlog and case reports left a digital
2 footprint detailing the changes to the reports made at Ms. Kim's direction. The first run of
3 the backlog reports shows the accurate number of backlogged files. However, the backlog
4 report run two hours later removed a certain group of cases to artificially lower the number
5 of backlog cases. The metadata on the State Bar server exposes the changes and Ms. Kim's
6 misconduct. The reduction in the State Bar's backlog inventory was not due to increased
7 productivity but rather due to Ms. Kim's removal of cases from the official backlog reports.

8 46. The California Bureau of State Audits is now conducting its biannual audit of
9 the State Bar in 2015. Rather than hold Ms. Kim and the OCTC accountable for its actions
10 as Senator Dunn encouraged, the State Bar terminated Senator Dunn and has taken adverse
11 actions against other whistleblowers for bringing this issue to their attention.

12 47. Upon hearing concerns from Senator Dunn about her performance, Ms. Kim
13 attempted to preserve her position by filing a complaint against Senator Dunn. As detailed
14 below, an evaluation of Ms. Kim's allegations against Senator Dunn was conducted at an
15 exorbitant expense to the membership of the State Bar. Ms. Kim's complaint against Senator
16 Dunn was made shortly after the annual review process for her was commenced, and was
17 merely pretextual to avoid Senator Dunn's oversight, criticism, and review of her. To date,
18 the State Bar has not provided a copy or summary of Ms. Kim's complaint to Senator Dunn.
19 What we do know is the unilateral decision to terminate Senator Dunn was made "without
20 cause."

21 48. Following Senator Dunn filing his original Complaint, Jayne Kim, and others
22 acting on her behalf, have engaged in retaliatory conduct to cover up Jayne Kim's
23 manipulation of backlog reports to RAD.

24 49. Specifically, Jayne Kim has attempted to deflect blame for the glaring
25 manipulation of the backlog reports on data analysts who worked under Jayne Kim. Jayne
26 Kim has initiated adverse employment and disciplinary actions against her accusers.
27 However, those blamed by Jayne Kim were simply tasked with the rote responsibility of
28 following Jayne Kim's instructions.

1 50. Further, the State Bar has purported to have initiated an "independent OCTC
2 investigation" into the removal of backlog cases in the RAD reports. The investigation was
3 supposedly initiated response to Senator Dunn's complaint. The purported investigation is
4 being led by Nancy Solomon, Esq.

5 51. It has been admitted by Ms. Solomon that she is a retained defense expert by
6 the law firm of Burke, Williams & Sorensen LLP in connection the civil defense of Senator
7 Dunn's lawsuit. The feigned independence of the OCTC investigation is a ruse and intended
8 to whitewash Jayne Kim's conduct. At least one high ranking managerial OCTC executive
9 has experienced severe backlash, reprisals, alienation, and diminution in functions
10 immediately following an interview with Ms. Solomon for voicing criticism against Jayne
11 Kim and for confirming the allegations in Senator Dunn's complaint about Jayne Kim's
12 conduct.

13 Fiscal Improprieties

14 52. The BOT, upon receiving Ms. Kim's complaint, decided to conduct an
15 "internal evaluation" of the allegations against Senator Dunn and others and to retain
16 Munger Tolles for that purpose. Munger Tolles had close personal ties with BOT member
17 Miriam Krinsky which were never fully disclosed prior to the firm's retention. The retention
18 of Munger Tolles in addition to being an utter waste of State Bar membership dues, violated
19 State Bar protocol.

20 53. The retention of private counsel by the State Bar is a function of the State
21 Bar's Office of General Counsel ("OGC"). The protocol for retaining a private firm is
22 simple: if it is determined that the retention of a private firm is needed, the OGC is charged
23 with selecting the appropriate firm based on experience and cost. The OGC protocol that is
24 in place attempts to secure the retention of a private firm on financially feasible terms and to
25 sift out potential conflicts of interest and cronyism with BOT members. Here, that process
26 was blatantly ignored.

27 54. Munger Tolles was retained based on the recommendation of BOT member
28 Miriam Krinsky. The OGC was never consulted in this process; rather, Defendant Holden

1 decided the OGC was "conflicted out" from performing its functions. Furthermore, this
2 private firm was retained at exorbitant rates. Three billing partners from the private firm that
3 were put on the "evaluation" each billed in excess of \$800 per hour. The current billable
4 hours for the services rendered by that private firm likely exceeds \$300,000.00.

5 55. BOT member Miriam Krinsky had a close personal and professional
6 relationship with Munger Tolles' lead billing partner who was assigned to lead the
7 "evaluation." Board Member Krinsky and the lead partner had a two-decade long
8 relationship beginning when they were co-counsel at the United States Attorney's Office in
9 the 1990s through 2010 when Ms. Krinsky shared office space with the lead partner while
10 she was the Executive Director of the LA County Citizen's Commission in 2010. This was
11 not disclosed to the BOT.

12 Legislative Compliance Failures

13 56. Senator Dunn has raised concerns that the State Bar BOT and Jayne Kim of the
14 OCTC were not enforcing the provisions of Assembly Bill 1159.

15 57. Assembly Bill 1159 was passed with bipartisan support of the State
16 Assembly and Senate. The bill was passed to enhance OCTC enforcement powers to
17 prosecute both lawyer and "notario" fraud, a form of unauthorized practice of law ("UPL")
18 that preys on California's large immigrant community.

19 58. The bill contained an urgency clause and was therefore effective the date it was
20 signed into law in October 2013. At or around the same time Ms. Kim was unlawfully
21 removing the backlog cases from her internal and public reports, she was also not
22 prosecuting fraud cases pursuant to the legislative will. Ms. Kim's failure to comply with
23 the legislative mandate was so egregious it prompted the author of AB 1159,
24 Assemblywoman Lorena Gonzalez, to send a letter demanding answers concerning the lack
25 of enforcement.

26 59. To date, the Legislature's questions about the enforcement of AB 1159 remain
27 ignored.
28

Beth Jay's Intentional Interference with Senator Dunn's Employment

60. Prior to Senator Dunn's unlawful removal from the State Bar of California, Defendant Beth Jay had previously shown a consistent pattern of improperly asserting authority and influence over the business affairs of the State Bar. This is despite the fact that Defendant Beth Jay had no formal or informal authority over the business affairs of the State Bar. Specifically, Defendant Beth Jay frequently attempted to intervene in policy, employment, and personnel decisions within the State Bar as well as attempting to influence the legislative prerogatives of the State Bar.

61. It has now been uncovered that Defendant Beth Jay was directly involved, and integral to, the effort to unlawfully remove Senator Dunn as Executive Director.

62. Specifically, on or around July 30, 2014, Defendant Beth Jay met with Defendant Holden, Jayne Kim, and Jim Fox to set in motion plans to remove Senator Dunn as Executive Director. The meetings between Defendant Holden, Jayne Kim, Jim Fox, and Defendant Beth Jay culminated in Jayne Kim filing a frivolous and unsubstantiated grievance against Senator Dunn. Upon information and belief, Defendant Beth Jay was directly involved in and copied on the email internal grievance against Senator Dunn. To date, Senator Dunn has never been presented with, or had the opportunity to review, let alone respond to the internal grievance.

63. Further, following Jayne Kim's internal grievance, Defendant Beth Jay engaged in continuous communications with certain BOT members which cast Senator Dunn in a false light. The efforts by Defendant Beth Jay were coordinated with the internal grievance by Jayne Kim and the preparation of the Munger Tolles report to convince certain BOT members to remove Senator Dunn as the executive director. Ultimately, while Senator Dunn's termination was "without cause" and no breach of his employment contract was cited, Defendant Beth Jay's involvement played a substantial role in the ultimate decision to terminate Senator Dunn.

Leak of Confidential Report

64. The private law firm of Munger Tolles was retained at an exorbitant expense to the State Bar members, and in violation of established protocol, to investigate unidentified targets.

65. Munger Tolles warned all BOT members who received the report that leaking of the information contained therein could lead to serious consequences including disbarment of the leaker. This is based on the serious ramifications to the reputations of those mentioned in the report if unsubstantiated allegations were leaked.

66. Regardless of these instructions, and in retaliation for Senator Dunn filing his lawsuit on November 14, 2014, certain BOT members maliciously and unethically leaked misleading portions from the report containing scurrilous and defamatory allegations against Senator Dunn and other State Bar leaders. The BOT members leaked this information to prominent media outlets in an attempt to deflect attention from Senator Dunn's lawsuit and to further retaliate against Senator Dunn.

67. To date, Senator Dunn has never even been given a copy of the Munger Tolles report. Additionally, Senator Dunn has not being given the opportunity to respond to any of the slanderous allegations against him.

68. Following the unlawful leak by certain BOT Members, the State Bar initiated a purported outside investigation into the source(s) of the leak. BOT members have remained wholly uncooperative in an attempt to cover up the leak, in direct violation of the State Bar's own promulgated Rules of Professional Conduct as well as California's Business and Professions Code.

69. In connection with the outside investigation, the following has been discovered. Certain BOT members have (a) refused to sign a declaration under penalty of perjury that they were not the source of the leak, (b) refused to turn over phone records from the date of the leak, and (c) refused to turn over their copies of the report since each report contains a seal that could identify the source of the leak.

1 70. California Business and Professions Code Section 6068 mandates the
2 cooperation and participation by members who are being investigated by the State Bar.
3 Here, BOT Members are refusing to cooperate and participate in the State Bar's own outside
4 investigation into the leak. It is deeply distressing to Senator Dunn as one of the victims of
5 the leak, and to the public as a whole, that the most sacred tenet of State Bar enforcement
6 procedure is being shirked and skirted by the very same State Bar that promulgates and
7 purports to enforce the rule.

8 **Efforts to Scuttle Sale of the State Bar's San Francisco Headquarters**

9 71. One glaring misrepresentation made by Defendants to BOT members, leading
10 to his unlawful removal, was that Senator Dunn was exploring the potential sale of the State
11 Bar's San Francisco headquarters without the authority to do so. Indeed, among the
12 initiatives by Senator Dunn as Executive Director was to bring important fiscal reforms and
13 prevent financial waste within the State Bar for the benefit of its members and to the public.
14 While it was true that Senator Dunn was exploring the feasibility, and the substantial
15 economic benefits to the State Bar from the sale of its San Francisco headquarters, the
16 Defendants representations that the BOT and other stakeholders were not informed of
17 Senator Dunn's efforts or that Senator Dunn did not have the authority to explore the
18 potential benefits of the sale were entirely false.

19 72. To protect interests contrary to the members of the public, Defendant Holden
20 has engaged in efforts to prevent the potential sale of the State Bar's San Francisco building.
21 Following Senator Dunn's filing of his initial whistleblower complaint, it was discovered
22 that among the grounds for his unlawful removal, was his efforts exploring the sale of the
23 San Francisco building.

24 73. More recently, it has been discovered that Defendant Holden has engaged in
25 additional efforts to forever prevent the sale of the State Bar's San Francisco building.
26 Specifically, Defendant Holden has concocted initiatives designed to lien the building to the
27 maximum extent possible, under the pretense of making purported building improvements,
28 which would serve to scuttle any potential sale. Sadly, these efforts will harm State Bar

1 members and the general public who would benefit immensely from the tens of millions of
2 dollars in equity which would otherwise be realized from the potential sale of the property
3 and the relocation of the State Bar's offices to a more financially tenable location.

4 Whistleblower Notice

5 74. On November 3, 2014, Senator Dunn and a group of other individuals
6 employed by the State Bar, through their counsel Geragos & Geragos, APC, submitted an
7 anonymous whistleblower complaint to the State Bar BOT outlining a number of the
8 concerns addressed above. Thereafter, on November 5, 2014, the whistleblowers submitted
9 another letter through counsel, providing further information and evidence of the
10 improprieties outlined herein. Senator Dunn was identified by the BOT as one of the group
11 of whistleblowers.

12 75. Senator Dunn was given notice of his termination on Friday, November 7,
13 2014 at 5:00 p.m. while he was giving a speech for the State Bar in San Francisco. Senator
14 Dunn received no explanation as to the basis for his termination. Senator Dunn was also
15 instructed by Holden that if he wanted to negotiate a severance agreement, he should not
16 speak to the public or the press about what had taken place. To date, Senator Dunn has not
17 been afforded any opportunity to respond to the unilateral notice of his termination or any of
18 the allegations that may have been made against him.

19 76. From November 10, 2014 to the present date, some of the other
20 whistleblowers that were responsible for providing information contained in the
21 whistleblower notices were, and have been, targeted with various degrees of retaliation and
22 discipline and termination. Like Senator Dunn, the other whistleblowers who have been
23 loyal, dedicated, and high-level employees at the State Bar for many years received no
24 explanation for the sudden unilateral retaliation against them by the State Bar.

FIRST CAUSE OF ACTION

WHISTLEBLOWER LIABILITY AND RETALIATION

Senator Dunn Against Defendant the State Bar of California

77. Plaintiff realleges and incorporates by reference all preceding paragraphs of this Complaint, as though fully set forth herein.

78. At all relevant times, Plaintiff was an employee of the State Bar.

79. On November 3, 2014 and November 5, 2014, Plaintiff made whistleblower complaints to the State Bar as detailed above. Additionally, Plaintiff made numerous complaints to the State Bar's BOT about the willful failure of the Chief Trial Counsel Jayne Kim to prosecute UPL fraud which would protect the immigrant community.

80. Plaintiff was given notice of termination from his employment as Executive Director of the State Bar on November 7, 2014 because he was identified as a whistleblower and because Holden intended to cover up malfeasance in the State Bar and secure his own agenda in usurping executive authority within the State Bar.

81. The State Bar has ratified and condoned the acts and omissions of Defendant Holden, Jayne Kim, and Miriam Krinsky. Specifically, the State Bar has terminated Plaintiff because he reported the serious malfeasance, illegal conduct, and financial improprieties described above.

82. The termination of Plaintiff on account of his complaints about the unlawful conduct violates the fundamental public policy against retaliation of whistleblowers in this State and the protections afforded under Labor Code section 1102.5.

83. As a result of the unlawful treatment of Plaintiff which culminated in his termination, Plaintiff suffered damages.

84. Defendants are subject to civil penalties and assessment under Labor Code section 1102.5.

85. Based on the unlawful acts taken by Defendants, Plaintiff has been deprived of his position as Executive Director of the State Bar. Pursuant to Labor Code section 1102.5, Plaintiff Senator Dunn seeks his immediate reinstatement as Executive Director of the State

1 Bar, or alternatively, for the Court to issue an Order to Show Cause regarding why Senator
2 Dunn should not be immediately reinstated based on the unlawful termination by the State
3 Bar.

4 **SECOND CAUSE OF ACTION**

5 **BREACH OF FIDUCIARY DUTY**

6 **Senator Dunn Against Defendant Craig Holden and Board of Trustee ROES**

7 86. Plaintiff realleges and incorporates by reference all preceding paragraphs of
8 this Complaint as though fully set forth herein.

9 87. At all times, Defendant Holden owed a fiduciary duty to the State Bar, Plaintiff
10 as Executive Director of the State Bar, to DOE Whistleblowers 1-7, and to the public.

11 88. Defendant Holden breached his fiduciary obligations by engaging in the
12 conduct described above, including but not limited to, authorizing the out-of-protocol and
13 conflicted retention of a private firm, condoning and attempting to cover up the unlawful
14 removal of backlogged State Bar complaints, failing to implement legislation, and
15 terminating Plaintiff and the DOE whistleblowers for reporting the illegal, improper, and
16 unethical conduct described above.

17 89. As a direct and proximate cause of Defendants' conduct, Plaintiff has been
18 injured, in an amount according to proof at trial.

19 90. Defendants' conduct was wanton, willful, and malicious giving rise to punitive
20 damages in favor of Plaintiff.

21 **THIRD CAUSE OF ACTION**

22 **BREACH OF FIDUCIARY DUTY - LEAK**

23 **Senator Dunn Against Defendant State Bar of California, Defendant Holden, and**
24 **Board of Trustee ROES**

25 91. Plaintiff realleges and incorporates by reference all preceding paragraphs of
26 this Complaint as though fully set forth herein.

27 92. At all times, Defendants owed a fiduciary duty to Senator Dunn not to leak
28 slanderous and false allegations from a confidential report prepared by a private law firm to

1 the press. Prior to the leak, BOT members were informed that the consequences of leaking
2 information from report including, but was not limited to disbarment.

3 93. Defendants breached its fiduciary obligations to Senator Dunn by leaking
4 slanderous and false allegations from the confidential report to the press. To this day,
5 Senator Dunn has not had the opportunity to review the report or respond to the slanderous
6 and false allegations.

7 94. Further, Defendants are under a fiduciary obligation to comply with the State
8 Bar Rules of Professional Conduct by cooperating with State Bar investigators to determine
9 the source of the leak. Instead, Defendants have flatly refused cooperation as detailed above.

10 95. The State Bar has ratified and condoned the acts and omissions of Defendant
11 Board of Trustee ROES. Specifically, the State Bar continues to permit certain BOT
12 members in covering up the source of the illegal leak.

13 96. As a direct and proximate cause of Defendants' conduct, Plaintiff has been
14 injured, in an amount according to proof at trial.

15 97. Defendants' conduct was wanton, willful, and malicious giving rise to punitive
16 damages in favor of Plaintiff.

17 **FOURTH CAUSE OF ACTION**

18 **INTENTIONAL INTEFERENCE WITH CONTRACTUAL RELATIONS**

19 **Senator Dunn Against Defendant Beth Jay, Defendant ROE 2,**
20 **and Board of Trustees ROES**

21 98. Plaintiff realleges and incorporates by reference all preceding paragraphs of
22 this Complaint as though fully set forth herein.

23 99. A valid contract existed between Plaintiff and the State Bar of California
24 wherein Plaintiff served as the Executive Director of the State Bar of California.

25 100. Defendant Beth Jay knew of the existence of this contract.

26 101. Defendant Beth Jay intentionally engaged in acts or conduct which directly
27 interfered with the performance of Plaintiff's contract as described in detail above.
28

102. Defendant Beth Jay intended to prevent Senator Dunn's performance of his employment with the State Bar and specifically sought to have Senator Dunn terminated from his position as the Executive Director by providing false information concerning Senator Dunn's employment status to BOT members as described above.

103. The acts or conduct of Defendant Beth Jay which interfered with Plaintiff's contractual relations were the cause of significant consequential and general damages to Plaintiff.

WHEREFORE, Plaintiffs request judgment against the Defendants as follows:

On the First Cause of Action:

1. For general and special damages in an amount according to proof at trial;
2. For pre- and post-judgment interest according to proof;
3. For costs of suit incurred herein;
4. For attorneys' fees;
5. For damages and fees pursuant to California Code of Civil Procedure § 1021.5;
6. For injunctive relief reinstating Plaintiff as Executive Director of the State Bar or, alternatively, for an Order to Show Cause why Senator Dunn (Ret.) should not be immediately reinstated based on the unlawful termination and retaliation by the State Bar; and
7. For all other relief as this Court may deem proper.

On the Second Cause of Action:

1. For general and special damages in an amount according to proof at trial;
2. For pre- and post-judgment interest according to proof;
3. For exemplary damages against Defendants;
4. For costs of suit incurred herein; and
5. For all other relief as this Court may deem proper

On the Third Cause of Action:

1. For general and special damages in an amount according to proof at trial;
2. For pre- and post-judgment interest according to proof;
3. For exemplary damages against Defendants;
4. For costs of suit incurred herein; and
5. For all other relief as this Court may deem proper.

On the Fourth Cause of Action:

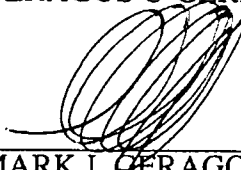
1. For general and special damages in an amount according to proof at trial;
2. For pre- and post-judgment interest according to proof;
3. For exemplary damages against Defendants;
4. For costs of suit incurred herein; and
5. For all other relief as this Court may deem proper.

Respectfully submitted,

DATED: April 29, 2015

GERAGOS & GERAGOS, APC

By:


MARK J. GERAGOS
BEN J. MEISELAS
Attorneys for Plaintiff
SENATOR JOSEPH DUNN (Ret.)

DEMAND FOR JURY TRIAL

Plaintiff Senator Dunn (Ret.) hereby demands a jury trial.

DATED: April 29, 2014

GERAGOS & GERAGOS, APC

By: 

MARK J. GERAGOS
BEN J. MEISELAS
Attorneys for Plaintiff
SENATOR JOSEPH DUNN (Ret.)

GERAGOS & GERAGOS, APC
HISTORIC ENGINE CO. NO. 28
644 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-3411

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 644 South Figueroa Street Los Angeles, California 90017-3411.

On April 29, 2015, I served the foregoing document(s) described as **FIRST AMENDED COMPLAINT FOR DAMAGES** on the interested parties in this action addressed as follows:

Lawrence C. Yee
Acting General Counsel
State Bar of California
180 Howard Street
San Francisco, California 94105

M. Carol Steven
Janae H. Novotny
Burke, Williams & Sorensen, LLP
1503 Grant Road, Suite 200
Mountain View, California 94040

Ronald F. Frank
Burke, Williams & Sorensen, LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071

Said service was made by placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above AND

- ☒ **By Personal Service:** Personally delivering said copies to the addresses stated above.
- ☒ **By electronic service:** Based on an agreement of the parties or on a court order to accept electronic service, I caused the documents to be sent to the persons at the email addresses listed above.
- ☐ **By fax transmission:** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used.

Executed on April 29, 2015 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


TONY BENITEZ

PROOF OF SERVICE