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SENATOR JOSEPH DUNN (Ret.)

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

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

Plaintiff,

vs.

THE STATE BAR OF CALIFORNIA;
CRAIG HOLDEN, an individual; and ROES
1 through 50, inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES

- 1. WHISTLEBLOWER LIABILITY AND RETALIATION – CALIFORNIA LABOR CODE SECTION 1102.5**
- 2. BREACH OF FIDUCIARY DUTY**

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Senator Joseph Dunn (Ret.), 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 (the “State Bar”) based on the State Bar’s unilateral termination of Senator Dunn’s employment on November 7, 2014, immediately after Senator Dunn, and other whistleblowers, through counsel, lodged two whistleblower notices with the State Bar’s Board of Trustees (“BOT”) on November 3, 2014 and November 5, 2014.

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1 leading to Senator Dunn’s termination. Finally, after Senator Dunn sent his whistleblower
2 notice, Holden guided the BOT to terminate Senator Dunn, but even then only “without
3 cause.”

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

8 7. Defendant Craig Holden’s conduct is part of an effort to usurp executive
9 authority in the State Bar and has cleared the way for Defendant Holden to assume control
10 over the State Bar’s executive functions. Employees of the State Bar have been informed
11 that Defendant Holden and Deputy Executive Director Robert Hawley will oversee and
12 manage the State Bar in the “interim” period. There has been no announcement for the
13 formation of a process to hire a new Executive Director. No previous State Bar President in
14 history has assumed executive management authority over the State Bar, as Defendant
15 Holden has now done. Plaintiff alleges that Defendant Holden has engaged in this conduct
16 to ultimately become the State Bar Executive Director.

17 8. In addition to the termination of Senator Dunn, the State Bar has recently
18 targeted some of the Whistleblower DOES 1-7 with various degrees of discipline and
19 retaliation because they corroborated and identified the same conduct Senator Dunn
20 complained of and joined in the whistleblower notices to the State Bar. Under the leadership
21 of Holden, the BOT has engaged in an effort to purge the ranks of whistleblowers at the State
22 Bar who were aware of and complained about the conduct of the BOT, President Holden,
23 and other ROE defendants. That purge of State Bar employees, consolidating power in the
24 hands of Holden, is unprecedented in the history of the State Bar.

25 9. On Friday, November 7, 2014, at approximately 5:00 p.m., while giving a
26 speech for the State Bar in San Francisco, Plaintiff Senator Dunn received a termination
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1 letter from Defendant President Holden. The termination letter demanded that Senator Dunn
2 not speak with the press or public if he desired to negotiate a “mutually acceptable
3 [severance] agreement.”

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

7 **PARTIES**

8 11. Senator Joseph Dunn (Ret.) is a former California State Senator who
9 represented California’s 34th Senate District in Orange County, California. Senator Dunn
10 was appointed as Executive Director of the State Bar of California on November 22, 2010.
11 Senator Dunn served in this capacity as the State Bar’s chief executive officer from
12 November 22, 2010 through his termination on November 8, 2014. Senator Dunn is a
13 resident of Orange County, California.

14 12. “The State Bar of California is a public corporation. Every person admitted and
15 licensed to practice law in this State is and shall be a member of the State Bar except while
16 holding office as a judge of a court of record.” (Cal. Const., art VI, § 9.) Under pain of
17 criminal punishment, no person may practice law in California unless he is an active member
18 of the State Bar. (Cal. Bus. & Prof. Code §§ 6125-6126.) The Board of Trustees of the State
19 Bar, upon authorization from the Legislature, fixes and imposes an annual membership fee
20 upon members of the State Bar. (*Id.* § 6140.) The fees are paid into the treasury of the State
21 Bar, and become part of its funds. (*Id.* § 6144.) The State Bar acts through the Board of
22 Trustees of the State Bar of California. The Board of Trustees makes rules of procedure,
23 regulates and operates the State Bar. The State Bar office is located at 845 South Figueroa
24 Street, Los Angeles, California 90017.

25 13. Defendant Craig Holden was installed as President of the State Bar in
26 September 2014 and is also a current partner at Lewis Brisbois Bisgaard & Smith LLP.

1 Defendant Holden resides in Los Angeles County, California. Craig Holden is sued herein in
2 his individual capacity.

3 14. ROES 1-50 include trustees and employees of the State Bar who acted in
4 concert with Defendant Holden as well as certain government employees not employed by
5 the State Bar.

6 **JURISDICTION AND VENUE**

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

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

12 **STATEMENT OF FACTS**

13 **Senator Dunn's Appointment as Executive Director**

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

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

6 19. Senator Dunn succeeded in bringing important reforms to the State Bar. For
7 example, Senator Dunn brought the investigative backlog on open complaints with the State
8 Bar to near zero in 2011 after years of criticism from the legislature on the size of the
9 backlog. Senator Dunn oversaw the purchase, remodel, and move in to the State Bar’s new
10 home at 845 South Figueroa Street. Working with the Chief Financial Officer, Senator Dunn
11 stabilized the State Bar’s budget with no new increase in mandatory dues under his
12 leadership. Senator Dunn created an external relations team to proactively advance the
13 public protection mission of the State Bar. This includes outreach to other State regulatory
14 bodies, law enforcement, the consulate community, religious communities, labor unions, and
15 others. Senator Dunn is also credited with substantially improving relations between the
16 Legislature and the State Bar including launching joint town halls with other regulatory
17 partners through the district offices of legislators. Senator Dunn also created a small
18 working group that met regularly to develop proposals to increase funding for legal services
19 in California.

20 20. In all his years as Executive Director of the State Bar, Senator Dunn received
21 glowing performance reviews. All of Senator Dunn’s formal performance reviews from
22 2011-2013 were positive leading the State Bar to award him substantial yearly bonuses in
23 addition to his salary.

24 21. Senator Dunn’s written employment agreement, initially set for a three year
25 term, was renewed in 2013 for a subsequent three-year term through 2016. However,
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1 Senator Dunn was given notice of termination on November 7, 2014, just one year into his
2 new term as Executive Director. The termination was “without cause.”

3 22. As discussed below, Senator Dunn had learned of egregious improprieties
4 being committed by BOT members, by Chief Trial Counsel Jayne Kim, and by Holden.
5 When Senator Dunn raised these concerns with other whistleblowers, which called to task
6 the State Bar’s core functions and competencies, Senator Dunn was targeted by Holden who
7 has attempted to cover up for the malfeasance that was reported. Holden initiated an
8 “evaluation” of certain executive employees at the State Bar including Senator Dunn and
9 tasked a private firm, outside of protocol, to investigate Senator Dunn and those executive
10 employees.

11 **Ethical Breaches – Unlawful Removal of Backlog**

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

16 24. It was uncovered that at Ms. Kim’s direction, internal reports were altered to
17 unlawfully remove cases from the statutory backlog. Ms. Kim then issued false reports to
18 the Regulation Admissions & Discipline (“RAD”) Committee of the State Bar, the
19 membership of the State Bar, the Legislature and the Governor, and the general public.

20 25. Ms. Kim’s conduct did not involve a few isolated incidents but was shockingly
21 rampant. In her reports to the RAD Committee on September 30, 2013, Ms. Kim unlawfully
22 removed 269 cases from the internal reports. She then used the altered internal reports to
23 prepare her official quarterly report to the RAD Committee and posted this information on
24 the State Bar website for public consumption. The information in the public reports was
25 false and misleading due to Ms. Kim’s unlawful removal of cases from the backlog reports.

1 retention. The retention of the private firm, in addition to being an utter waste of State Bar
2 membership dues, violated State Bar protocol.

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

10 31. The selected firm was retained based on the recommendation of BOT member
11 Miriam Krinsky. The OGC was never consulted in this process; rather, Holden decided the
12 OGC was "conflicted out" from performing its functions. Furthermore, this private firm was
13 retained at exorbitant rates. Three billing partners from the private firm that were put on the
14 "evaluation" each billed in excess of \$800 per hour. The current billable hours for the
15 services rendered by that private firm likely exceeds \$300,000.00.

16 32. BOT member Miriam Krinsky had a close personal and professional
17 relationship with the private firm's lead billing partner who was assigned to lead the
18 "evaluation." Board Member Krinsky and the lead partner of the private firm had a two-
19 decade long relationship beginning when they were co-counsel at the United States
20 Attorney's Office in the 1990s through 2010 when Ms. Krinsky shared office space with the
21 lead partner while she was the Executive Director of the LA County Citizen's Commission
22 in 2010. This was not disclosed to the BOT.

23 **Legislative Compliance Failures**

24 33. Senator Dunn has raised concerns that the State Bar BOT and Jayne Kim of the
25 OCTC were not enforcing the provisions of Assembly Bill 1159.

1 been afforded any opportunity to respond to the unilateral notice of his termination or any of
2 the allegations that may have been made against him.

3 39. On November 10, 2014, some of the other whistleblowers that were
4 responsible for providing information contained in the two whistleblower notices were
5 targeted with various degrees of retaliation and discipline and believe they are in imminent
6 jeopardy of being terminated. Like Senator Dunn, the other whistleblowers who have been
7 loyal, dedicated, and high-level employees at the State Bar for many years received no
8 explanation for the sudden unilateral retaliation against them by the State Bar.

9 40. It is with deep sadness and a heavy heart that Senator Dunn has been
10 compelled to bring this action against the State Bar of California, an organization which he
11 loyally served for four years. However, given the glaring injustices, unethical conduct, and
12 massive cover-up that has crippled the State Bar's ability to function, this action has become
13 necessary to restore the public trust and confidence in the State Bar, to restore the integrity of
14 the organization, and to vindicate Senator Dunn's rights.

15 **FIRST CAUSE OF ACTION**

16 **WHISTLEBLOWER LIABILITY AND RETALIATION --**

17 **LABOR CODE SECTION 1102.5**

18 **Senator Dunn Against Defendant the State Bar of California**

19 41. Plaintiff re-alleges and incorporates by reference all preceding paragraphs of
20 this Complaint, as though fully set forth herein.

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

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

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.

Respectfully submitted,

DATED: November 13, 2014

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: November 13, 2014

GERAGOS & GERAGOS, APC

By:


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