

1 DANIEL A. OSBORN (SBN: 132472)
2 **OSBORN LAW P.C.**
3 43 West 43rd Street, Suite 131
4 New York, New York 10036-7424
5 Telephone: (212) 725-9800
6 Facsimile: (212) 500-5115

7 *Attorneys for Plaintiffs*

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 ANA AGATON and ARTURO EMANUEL
11 AGATON,

12 Plaintiffs,

13 v.

14 THE STATE BAR OF CALIFORNIA,
15 TOM LAYTON, JOE DUNN, HOWARD
16 MILLER, JOHN NOONEN, MURRAY
17 GREENBERG, MIKE NISPEROS,
18 RICHARD PLATEL, and DOES 1 through
19 50, inclusive;

20 Defendants.

CASE NO:

CLASS ACTION COMPLAINT FOR:

- (1) Violation of Gov. Cod. 815.2 -
NEGLIGENCE UNDER THE
CALIFORNIA TORT CLAIMS ACT;
- (2) Violation of Gov. Cod. 815.3 -
INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;
- (3) GROSS NEGLIGENCE / RECKLESS
MISCONDUCT;
- (4) NEGLIGENT SUPERVISION;
- (5) CIVIL CONSPIRACY

Action Filed:

Department:

Judge:

DEMAND FOR JURY TRIAL

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1 Plaintiffs each individually and d/b/a, and Does 1 through 50 (“Defendants”), respectfully
2 allege as follows:

3 **INTRODUCTION**

4 1. On October 11, 2009, a six-year-old boy, Arturo Agaton, Jr., succumbed to brain
5 cancer caused by exposure to excessive levels of hexavalent chromium (chromium 6) released into
6 the air where he lived in Riverside, California. Arturo Jr.’s death was linked to a cement company
7 named TXI Industries, who had been emitting excessive levels of chromium 6 for years. The loss
8 was devastating to Arturo’s parents, Ana and Arturo, Sr.

9 2. Class action lawsuits followed against TXI, and Ana and Arturo, Sr. joined the suit
10 filed by Tom Girardi and his firm, Girardi Keese, on October 8, 2008. By October of 2008, Girardi
11 had become an accomplished, successful plaintiffs’ attorney.

12 3. On September 25, 2015, Girardi announced the settlement of the TXI Industries
13 litigation for \$31 million. Sadly, Girardi never paid the Agatons their share of the TXI settlement
14 proceeds or, upon information and belief, any other TXI plaintiffs.

15 4. Through absolutely no fault of their own, the Agatons have now lost their son to
16 unlawful corporate actions (the illegal release of toxic chemicals) and they have been deprived of
17 their settlement proceeds from the suit against the polluter (theft of proceeds by Girardi). The
18 Agatons also suffered the loss of their home and they had to re-start their work careers as well.

19 5. This case does not seek redress or include any claims or collection theories against
20 TXI. Rather, this case exposes the rampant corruption at the State Bar of California and targets
21 the incestuous relationship between Tom Girardi and the Girardi Keese law firm on the one hand,
22 and the State Bar of California and its employees and staff on the other hand. This relationship
23 allowed Girardi and Girardi Keese to steal millions from their clients (like the Agatons) and from
24 referral lawyers, while Girardi showered his State Bar connections with cash, gifts, jewelry, meals
25

1 at expensive clubs and restaurants, private jet transportation, employment at his law firm, trips to
2 Las Vegas, and more.

3 6. Between 1982 and January 2021, 130 complaints were filed with the State Bar
4 against Girardi, an average of 3.3 complaints per year for almost 40 years. Upon information and
5 belief, and upon reviews of State Bar Annual Reports, it is safe to say that most attorneys go their
6 entire careers with no complaints lodged against them. And while a single complaint does not
7 portend disbarment, two complaints, especially those involving theft of client monies, almost
8 guarantees it.

9 7. The actual number of complaints against Girardi is 205, but the State Bar did not
10 investigate the other 75 because they were filed after Girardi's disbarment on July 1, 2022.
11 Another 15 complaints could not be investigated because the files could not be found.

12 8. Of the 130 complaints registered against Girardi, not a single one resulted in public
13 discipline by the State Bar. In fact, until 2022, no cases resulted in public discipline, making it
14 impossible for members of the public to even know about the wrongdoing.

15 9. Regardless of whether any individual complaint had merit, it is unfathomable that
16 the sheer number of complaints against Girardi would not cause alarm bells to go off at State Bar
17 headquarters and prompt a comprehensive investigation.

18 10. The State Bar website is replete with recitations of its primary mission: Protect the
19 public. The website also is replete with admissions and acknowledgments that, in the case of Tom
20 Girardi, the State Bar failed to do its job.

21 11. For example, in its November 3, 2022 Open Letter regarding the Girardi scandal,
22 the State Bar said:

23 "The handling of the Girardi matters brought to light serious failures in the State
24 Bar's attorney discipline system, failures that have contributed to a lack of
25 confidence in the State Bar's ability to carry out our core responsibility of

1 protecting the public. There is no excuse being offered here; Girardi caused
2 irreparable harm to hundreds of his clients, and the State Bar could have done more
3 to protect the public. We can never allow something like this to happen again.”

4 12. In response to the Girardi scandal, the State Bar undertook a series of massive
5 corrective measures. Relevant to this case is that the Office of Chief Trial Counsel implemented
6 new policies and procedures (i) requiring assessments of conflicts of interest at case assignment
7 and case closure, (ii) enhancing the ability to consider patterns of prior complaints when making
8 investigative and closure decisions, and (iii) making clear that a complainant’s desire to withdraw
9 his/her complaint will not necessarily result in closure of the case. State Bar 2022 Annual Report.

10 13. In addition to changing some of the internal processes, the State Bar commissioned
11 two reports: one to analyze each of the complaints against Girardi and, more importantly for
12 purposes of this Complaint, one to examine the relationships between various employees and staff
13 of the Girardi Keese law firm and various employees and staff of the State Bar.¹

14 14. According to the State Bar:

15 “In early 2023, the State Bar shared publicly redacted versions of the two reports that
16 together revealed how Girardi used money and influence to evade discipline, and how past
17 members of the State Bar’s Board, leadership and staff engaged in shocking ethical lapses
18 and wrongdoing.” State Bar 2022 Annual Report.

22 ¹ The report that analyzed the individual complaints against Girardi was prepared by Alyse
23 Lazar (hereinafter the “Lazar Report”) and released on March 10, 2023. The report that examined
24 the relationships between various employees and staff of the Girardi Keese law firm and various
25 employees and staff of the State Bar was prepared by the Halpern May Ybarra Gelberg LLP law
firm (hereinafter the “Halpern May Report”) and also released on March 10, 2023. This Complaint
incorporates many allegations from the Halpern May Report.

1 15. Despite the fact that Girardi has been disbarred, that he appears to be mentally
2 incapacitated to some degree, and that he has vanished from the public eye, the State Bar continues
3 to refuse to make unredacted copies of either report available to the public on privacy grounds.
4 Whatever privacy concerns exist are far outweighed by the public's right to know what happened
5 – not just generally, but specifically.

6 16. Had the State Bar carried out its mission of protecting the public, this Complaint,
7 and many others like it, would not be necessary. But the State Bar did not put the public first.
8 Instead, while Girardi was hard at work defrauding his clients and co-counsel, State Bar officials
9 were gallivanting around the country in Girardi's private jet, staying at luxury hotels in Las Vegas,
10 enjoying fine dining at expensive private clubs, attending lavish holiday parties with Hollywood
11 entertainers, or attending concerts and other events, all paid for by Girardi and his firm and all
12 while employed by the State Bar.

13 17. Girardi's favorite scheme was using settlement monies from one case to pay the
14 plaintiffs in another case and then lying to clients when they called to find out the status of their
15 settlement checks. Girardi also lied to co-counsel when they called with a similar question:
16 "Where is my referral fee?"

17 18. The Agaton case followed the same pattern. On October 8, 2008, Girardi Keese
18 filed a class action lawsuit on behalf of several Rubidoux residents, including the Agatons, against
19 TXI Riverhead Cement Co. in Riverside Superior Court. In April 2008, TXI had been found
20 responsible for elevated levels of hexavalent chromium in the air around the Rubidoux and Colton
21 plants. The news came after a five-month investigation by the South Coast Air Quality
22 Management District. The investigation showed that just north of TXI, in Rubidoux, airborne
23 levels of chrome 6 were 10 times higher than the average level in the other areas.
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1 California, and at least one Defendant resides in the State of California.

2 28. Venue is proper because the acts and/or omissions complained of took place, in
3 whole or in part within the venue of this Court, and/or one or more Defendants does business
4 within the venue of this court.

5 29. Plaintiffs submitted a Notice of Claim to the State Bar of California on May 1,
6 2023. The State Bar of California rejected the Notice of Claim on June 13, 2023.

7 **PARTIES**

8 30. Plaintiff Ana Agaton, at all times mentioned herein relevant to this Complaint, was
9 a resident of California, the wife of Arturo Emanuel Agaton, and the mother of Arturo Emanuel
10 Agaton, Jr.

11 31. Plaintiff Arturo Emanuel Agaton, at all times mentioned herein relevant to this
12 Complaint, was a resident of California, the husband of Ana Agaton, and the father of Arturo, Jr.
13 Mr. and Mrs. Agaton were class members in the underlying class action suits against TXI.

14 32. Defendant State Bar of California is a public corporation and has offices located in
15 San Francisco and Los Angeles. The State Bar is established for governmental purposes under
16 the authority of the Constitution of the State of California at article VI, section 9. The State Bar
17 acts as the administrative arm of the California Supreme Court in all matters related to attorney
18 admission and discipline in California.

19 33. Defendant Tom Layton worked as an Investigator for the State Bar of California
20 from May 1999 to November 2015 and resides in La Canada Flintridge, California.

21 34. Defendant Joseph Dunn is the former Executive Director for the State Bar of
22 California (2010-2014) and is a resident of California.

23 35. Defendant Howard Miller is a former President of the State Bar of California
24 (2008), was a member of Girardi Keese (March 2002-February 2018), and is a resident of
25 California.

1 administration of the discipline system. The Office of General Counsel also reports directly to the
2 Board.

3 50. Class Members/Plaintiffs are members of the public who have been harmed by the
4 State Bar's decades of shielding and protecting Girardi and Girardi Keese, regardless of their
5 blatant and constant criminal activities. Specifically, Class Members/Plaintiffs are members of
6 the protected class that the State Bar and its public employees or officials exist to "protect" above
7 any other interest.

8 **FACTS COMMON TO ALL CAUSES OF ACTION**

9 51. The State Bar of California admitted Girardi on January 3, 1965.

10 52. Between 1982 and 2021, the State Bar fielded 130 complaints against Girardi and
11 his firm Girardi Keese (of which Girardi was the sole equity holder), with at least half of those
12 cases asserting misconduct in his law practice. Yet through it all, Girardi's record with the State
13 Bar, the government agency that regulates attorneys, remained pristine. Despite the prodigious
14 number of complaints, in some 40 years, the State Bar never took action to warn the public about
15 Tom Girardi or Girardi Keese. Girardi's spotless license allowed him to continue marketing
16 himself as one of the nation's most renowned lawyers and to sign up countless of new clients.

17 53. Girardi didn't just sit back and hope for a forgiving claims investigator. Rather,
18 Girardi cultivated close relationships with State Bar officials, from the top of the organization to
19 low-level staffers, and plied them with cash, gifts, tickets to events, invitations to parties, and even
20 employment at his law firm. These State Bar officials knew that providing cover for Girardi was
21 inappropriate and, in many cases, flat-out unlawful, but they could not resist the temptation of
22 access to a successful, wealthy, high-rolling lawyer and celebrity. As laid bare in this Complaint,
23 Girardi's ability to establish these cozy relationships allowed him to avoid investigation and
24 punishment. For their part, the State Bar employees and officials knew that these relationships
25 were improper, but they pursued them anyway.

1 State Bar but stated that he had only taken one trip on the plane during his time at the State Bar.
2 However, Dunn’s testimony appears to be inconsistent with documentary evidence showing that
3 Dunn flew on Girardi’s plane at least five times while he was the Executive Director of the State
4 Bar. Halpern May Report, p. 27.

5 59. According to records from Girardi Keese, the firm donated \$25,000 to Dunn’s
6 campaign for the California State Senate in 2000. Girardi Keese also paid \$240,000 (in six \$40,000
7 installments) to the Law Offices of Joseph Dunn over 2009 and 2010, before Dunn joined the State
8 Bar. The reason for the payments was not stated and Dunn testified that he did not disclose any
9 payments or gifts from Girardi Keese – in other words, he claimed not to know.

10 60. Dunn also appears to have received gifts from Girardi in the form of hotel stays and
11 entertainment in Las Vegas.

12 61. Dunn also corresponded with a Girardi Keese employee in 2010 about another Las
13 Vegas trip. Dunn asked the Girardi Keese employee about tickets to a show and the Girardi Keese
14 employee confirmed that the tickets had been procured; Dunn also received check-in details for a
15 suite at the Wynn, suggesting that Girardi had arranged for the trip. Halpern May Report, p. 28.

16 62. Approximately nineteen Girardi cases were closed during Dunn’s tenure as
17 Executive Director – a period of only four years! The reasons for closing 19 cases have not been
18 disclosed to the general public.

19 63. Finally, Dunn was involved in the termination of four senior OCTC attorneys,
20 including two who were advocating for discipline against Girardi. Plaintiffs are not aware of the
21 names of the two attorneys who were pressing for discipline but hope to obtain them in discovery.

22 **HOWARD MILLER**

23 64. Howard Miller served on the State Bar Board of Trustees (formerly known as the
24 Board of Governors) from 2006 to 2010, acting as its President from 2009 to 2010. Concurrent
25 with his tenure on the Board, Miller was also an attorney at Girardi Keese with the title “partner.”

1 January 2019. In return, Greenberg sent wine to Girardi and a Girardi Keese employee.

2 73. Evidence shows that Greenberg was involved in closing six Girardi cases without
3 public discipline. The Halpern May Report concluded that given his connections to Girardi,
4 Greenberg had a conflict of interest or, at the very least, there were substantial doubts about his
5 impartiality. The Report further concluded that Greenberg's connections to Girardi tainted his
6 handling of the six cases and the discretionary decisions to close them without public discipline.

7 **TOM LAYTON**

8 74. Girardi had his most substantial relationship with State Bar investigator Tom
9 Layton. Layton started working at the State Bar in 1999 as a complaint investigator in the OCTC
10 and reported to Executive Director Dunn.

11 75. The Halpern May Report states that Girardi forged a tight relationship with Layton.
12 Girardi is the godfather to Layton's daughter and employed another two of his children while
13 Layton worked at the State Bar. One witness described Girardi's relationship with Layton as one
14 of "father and son."

15 76. For the 15 years that Layton worked at the State Bar, Girardi routinely treated him
16 to pricey meals at the Jonathan Club, Morton's and the Palm and Layton rode on Girardi's private
17 jet.

18 77. In addition, according to records from the Girardi Keese firm, Layton, his wife and
19 a business entity they ran together (Layton & Layton) received over \$600,000 in payments from
20 Girardi Keese while Layton was employed at the State Bar. Most of the money went to Layton &
21 Layton for so-called "consulting services," although neither Layton nor his wife, when deposed,
22 could explain what the services were.

23 78. In 2011, Girardi provided Layton with a Girardi Keese American Express card.
24 Layton used the card for personal expenses but the statements went directly to, and were paid by,
25 Girardi Keese. At his deposition, Layton claimed attorney-client privilege when asked why

1 Girardi would pay his personal expenses. After threatening court intervention to compel Layton
2 to answer these questions, Layton agreed to provide answers, but his explanations made little
3 sense.

4 79. In the Girardi Keese Chapter 7 Trustee’s lawsuit against Layton, the Trustee alleges
5 that Layton charged \$315,114 on his Girardi Keese American Express card between December 18,
6 2013 and December 18, 2020.

7 80. In addition, Layton has admitted that Girardi paid for the leases on Layton’s cars –
8 two BMWs and a Cadillac – during a time period including when Layton was employed by the
9 State Bar and after he was terminated.

10 81. Girardi also guaranteed a bank loan of \$150,000 to Layton and, through his law
11 firm, made payments on the loan. Layton said the loan was for home renovations. Regardless of
12 the purpose, payments on the loan were made while Layton was an employee of the State Bar.

13 82. Girardi held extravagant Super Bowl parties and annual Christmas feasts, where
14 Layton mingled with a powerful crowd of judges, attorneys, and politicians.

15 83. With Girardi’s support, Layton became known for helping ambitious lawyers who
16 sought judgeships. He assisted several governors as they vetted applicants for vacant bench
17 positions.

18 84. While collecting a salary as a watchdog for the public, Layton spent work hours
19 advancing the interests of Girardi. Layton was arranging dinner dates for Girardi with civic elites,
20 such as then Los Angeles Police Chief Charlie Beck and billionaire developer Ed Roski, and
21 otherwise acting as his personal assistant, political operative and, at times, chauffeur.

22 85. Layton’s official duties at the Bar consisted mainly of interviewing disgruntled
23 clients and tracking down records. His position granted him access to confidential information
24 about attorneys and their misdeeds, but his position at the State Bar paid a very modest salary.

25 86. When Layton and his wife were sued by the contractor building their “dream

1 home,” Girardi provided years of free legal work. Specifically, two years into the project, with
2 costs approaching half a million dollars, the Laytons fired their contractor, who then sued them.
3 Girardi’s firm immediately began representation of the Laytons. In the years that followed, Girardi
4 Keese poured resources into the case without charging any fees or costs.

5 87. During Layton’s tenure at the Bar, Girardi and his firm were sued at least 45 times
6 for legal malpractice or misappropriation of client funds. In at least 14 other cases, attorneys or
7 expert consultants have alleged that Girardi failed to pay them. These lawsuits were filed in public
8 courthouses and were in addition to the State Bar Complaints. Girardi prevailed in some of the
9 cases while many settled before trial.

10 88. The State Bar can use public lawsuits as a basis for initiating an investigation. It
11 does not appear that any of the publicly filed lawsuits resulted in any action by the State Bar.

12 89. Upon information and belief, Layton was referring potential cases he encountered
13 while at the State Bar to Girardi Keese. In one instance, Layton contacted Girardi Keese by email
14 about a scam involving a fake law firm that was targeting Marines at Camp Pendleton.

15 90. Upon information and belief, Layton actively shielded Girardi and his firm from
16 complaints and any disciplinary action.

17 **MIKE NISPEROS**

18 91. Mike Nisperos joined the State Bar as Chief Trial Counsel in March 2001 and left
19 the office in 2005.

20 92. In May 2001, Nisperos and his son attended an NBA semifinals playoff game with
21 free tickets provided to them by Layton. Nisperos stated that when he and his son arrived at the
22 basketball game, Girardi and other guests, including Layton and his son, were in attendance.
23 Nisperos stated that he learned that the tickets had been provided by Girardi and he socialized with
24 Girardi at the game.

25 93. Nisperos reported meeting with Girardi personally for a second time in 2005,

1 shortly before Nisperos left the State Bar. Nisperos reported that he and Girardi met over breakfast
2 so that Nisperos could thank Girardi for Girardi's offer of assistance to Nisperos, which Nisperos
3 said had been previously communicated to him by Layton.

4 94. During Nisperos's time as CTC, there were approximately seven Girardi cases
5 closed by his office. None of those cases were sent out to conflicts counsel under Rule 2201, but
6 instead were closed by State Bar staff. This includes Case 01-0-03204, a case the Halpern May
7 Report found to have been closed under suspicious circumstances by State Bar staff in April 2002.³

8 95. Upon information and belief, Nisperos actively shielded Girardi and his firm from
9 complaints and any disciplinary action.

10 **JOHN NOONEN**

11 96. John Noonen was an investigator at the State Bar from 1987 until his termination
12 in 2015. From 2012 to 2015, Noonen served as the Managing Director of Investigations.

13 97. Noonen and Layton worked together as investigators for many years at the State
14 Bar, and they appear to have had a close relationship. Layton reportedly introduced Noonen to
15 Girardi around 2001 or 2002.

16 98. Noonen attended lunches at Morton's with Layton and he admitted that Girardi was
17 sometimes also present.

18 99. In September 2014, while serving as the Managing Director of Investigations for
19 the State Bar, Noonen accepted eight tickets to a UCLA sports game from Girardi Keese.

20 100. Noonen also appears to have attended several Girardi and/or Girardi Keese parties,
21 such as the 2010 Christmas party.

22 101. Noonen was assigned as an investigator to two Girardi cases while at the State Bar,
23

24
25 ³ This confirms the need to make the case files completely unredacted.

1 both of which were closed without discipline.

2 102. Case 12-0-16066 involved allegations of misappropriation, misrepresentations to
3 the court, trust account issues and the commission of a crime, and was closed in 2012 for
4 insufficient evidence.

5 103. Case 12-0-15515 involved allegations of failure to perform, delay, abandonment of
6 client, lack of/failure to communicate, and withdrawal from employment and was closed in 2013
7 also for lack of evidence.

8 104. Both above-referenced cases were reviewed in 2022 and it was found that neither
9 was properly investigated.

10 105. Upon information and belief, Noonan actively shielded Girardi and his firm from
11 complaints and any disciplinary action.

12 **RICHARD PLATEL**

13 106. Richard Platel joined the State Bar as an attorney in June 1999. In August 2001,
14 Nisperos, then the CTC, promoted Platel to an Assistant Chief Trial Counsel (ACTC) position.

15 107. Documents show that Platel was invited to the Christmas party thrown by Girardi
16 and/or Girardi Keese in at least 2010, 2011, 2013-2014, and 2018-2019. He also appears to have
17 been invited to the Girardi Superbowl party in at least 2009, 2011-2012, 2014, and 2018-2019.
18 Additionally, Platel and his wife (another State Bar employee) were included on Girardi Keese's
19 guest list for the 2013 Jack Webb Award dinner.

20 108. Platel was approached by Girardi in 2017 and asked to help with a case that Girardi
21 Keese was litigating. Platel has admitted to flying on Girardi's private jet to and from a hearing,
22 along with his wife.

23 109. While in OCTC, Platel appears to have intervened and closed a Girardi case (Case
24 01-O-03204) in 2002 involving allegations of trust accounting violations. Multiple witnesses
25 commented that the handling of the case was suspicious. A subsequent independent review in

1 2022 concluded the case was improperly resolved and that Girardi should have been disbarred or
2 suspended if it were properly handled.

3 110. The corruption at the State Bar manifested itself in (i) conflicts being ignored, (ii)
4 inadequate investigation of victims' complaints, (iii) cases being closed prematurely, (iv) the
5 failure to mete out any punishment for the theft of client settlement funds and attorney referral
6 fees, and (v) clients being deprived of their settlement funds.

7 **CASES WHERE STATE BAR FAILED TO ACT**

8 111. The Lazar Report chronicles the history of the complaints filed against Girardi and
9 Girardi Keese with the State Bar. This complaint lays out a number of cases handled by Girardi
10 and Girardi Keese for which a file number was assigned and some level of investigation was
11 conducted. We start in 1993 with the case of *Anderson v. PG&E*.

12 **ANDERSON v. PG&E**

13 112. In 1993, a lawsuit was filed in a case styled *Anderson v. PG&E (the "Erin*
14 *Brockovich case")*. The plaintiffs were residents of the town of Hinkley and they alleged that
15 PG&E had been dumping chromium-tainted wastewater in the local waterways. The case had 650
16 plaintiffs. In 1994, Girardi joined the case against PG&E on the plaintiffs' side.

17 113. On the advice of Girardi and the other attorneys, the residents agreed to arbitration.

18 114. The PG&E arbitration was heard before a panel of retired judges in San Francisco
19 and Los Angeles. According to a July 2, 1996 letter to their clients, Girardi and the other plaintiffs'
20 attorneys expected to settle the case against the utility for \$400 million.

21 115. The retired judges who heard the case were all employed by JAMS/Endispute.

22 116. As it turned out, Girardi had ties to at least three of the private judges in the PG&E
23 case: Jack Tenner, John Trotter and Jack Goertzen.

24 117. Tenner, a retired Los Angeles Superior Court judge, officiated at Girardi's second
25 wedding, in September 1993. When John Trotter sat down over dinner one night to convince then-

1 Superior Court Judge William Schoettler to retire from the bench and work for JAMS, his friend
2 Girardi came along. Schoettler also says that Goertzen has been a friend of Girardi's for many
3 years.

4 118. On June 12, 1996, PG&E settled the *Hinkley* case with Girardi for \$333 million and
5 delivered the money a few weeks later.

6 119. The plaintiffs in the case were delighted to hear of the settlement's general terms,
7 figuring that a third of one billion dollars would result in payments to them of some \$500,000 each,
8 minus their attorney's fees. But in August 1996, when they were informed of the amount of their
9 award and the circumstances of their payment, many were shocked.

10 120. First, the plaintiffs were surprised when their attorneys told them they would not
11 be getting their money for five months. Under California State Bar Rule 4-100, an attorney has to
12 release his client's money "promptly," as soon as the client asks for it.

13 121. Second, Girardi and the other attorneys appeared on television shows and in
14 newspaper stories, discussing their victory against PG&E. At the same time, the attorneys
15 repeatedly warned their clients not to talk to the press or even share information among themselves.

16 122. Finally, on January 2, 1997, nearly six months after PG&E had deposited the
17 settlement proceeds, settlement checks were mailed to the clients. Many of the residents had a
18 hard time reconciling the small amount of their checks with the enormous legal fees. Arbitrated
19 cases are supposed to be quicker and cheaper than court trials. In this case, Girardi took 40 percent,
20 or \$133 million. But then the clients were billed an extra \$10 million for expenses, which were
21 not detailed. That left \$196 million for the plaintiffs, or an average of about \$300,000 per victim.
22 The amounts varied, without explanation. Dorothea M. received \$60,000; Christine M. got
23 \$50,000; Lynn T. \$50,000; Tiffany O. got \$60,000. Because the actual allocation of settlement
24 proceeds was not disclosed, there was no way to ascertain, short of a survey of all 650 clients in
25 the case, how much money was distributed to Hinkley residents.

1 even in the face of three court orders. As the judge was preparing to send an accounting firm into
2 Girardi's office to conduct an audit, Girardi settled the case and shielded his books from inspection.

3 131. Additional suits were filed against Girardi, and in one case he racked up nearly
4 \$60,000 in penalties for defying court orders. Ultimately, the cases were dismissed on statute of
5 limitations grounds, and the misappropriation allegations never got a full hearing.

6 132. Girardi dispatched one Lockheed suit by settling soon after it was filed in court.
7 According to a 2000 report, there were calls for the California State Bar to investigate, but they
8 went unheeded.

9 133. *Luis Gutierrez v. Thomas V. Girardi et al*, case number BC400560, was filed in the
10 Superior Court for the State of California, County of Los Angeles. In this case, additional
11 Lockheed employees allege Girardi misappropriated funds from a settlement for on-the-job
12 exposure to chemicals. A California judge dismissed the case as time-barred, which was upheld
13 on appeal. Despite the seriousness of the claims and the involvement of the appellate court, it is
14 believed that the State Bar took no action against Tom Girardi or his firm for alleged
15 misappropriation of funds.

16 134. In 2016, *Kranich v. Girardi et al.*, case number 2:16-cv-01209, was filed in the U.S.
17 District Court for the Central District of California. In *Kranich*, another former Lockheed
18 employee alleged Girardi misappropriated funds from a settlement for on-the-job exposure to
19 chemicals. Kranich further accused Girardi of stealing \$8.5 million from a batch of settlements,
20 saying that in 2005, Girardi used \$3.5 million of the \$8.5 million to settle a previous Lockheed
21 settlement-skimming suit. Kranich's case was dismissed as time barred.

22 135. Upon information and belief, the State Bar took no action against Tom Girardi or
23 his firm for the misappropriation of funds.
24
25

1 **THE DOLE FOOD CASE**

2 136. The story about the Dole Food case demonstrates the State Bar’s reluctance to
3 investigate Girardi.

4 137. In the early 2000’s, Girardi and his law firm identified what they believed was a
5 potential bonanza of legal fees in the banana plantations of Nicaragua.

6 138. Girardi and his co-counsel signed up more than 400 field workers for a suit against
7 Dole and other companies over the use of toxic pesticides.

8 139. However, the Nicaraguan lawyers helping on the case had gotten the defendant’s
9 name wrong and erroneously sued “Dole Food Corporation” – a company that did not exist, rather
10 than rightful defendant, Dole Food Company.

11 140. In 2002, the Nicaraguan court handed down a \$489 million judgment against the
12 nonexistent defendant and other companies.

13 141. To collect the judgment, Girardi headed to the friendly jurisdiction of Los Angeles
14 Superior Court, where he knew the judges. The corporate defendants wanted the case in federal
15 court rather than state court.

16 142. In his efforts, Girardi and his co-counsels filed what they claimed was a translation
17 of the Nicaraguan order of judgment. In this document, the name of the nonexistent defendant had
18 been replaced with the name of the actual Dole company.

19 143. The federal judge in the case was not fooled and caught on to Girardi’s ruse. The
20 case was thrown out of court. Despite the ruling, Girardi continued appealing the case for years by
21 arguing known falsehoods and lies.

22 144. The 9th Circuit launched an investigation into Girardi’s false filings and appeals,
23 and in 2008, Girardi was found to have recklessly made false statements to the court and was fined
24 \$125,000.00.

25 145. The court discipline triggered an automatic investigation by the Bar, but there was

1 a gap of more than two years between the time the retired judge's report made it clear Girardi
2 would face an investigation and the court decision making the sanction official.

3 146. The Ninth Circuit also later appointed a Special Prosecutor, Mr. Rory Little, in
4 order to determine what, if any, discipline and sanctions should be imposed on Respondents
5 except, for some unclear reason, Mr. Howard Miller. Also unclear is why Rory Little's report and
6 recommendation are still under seal.

7 147. During that interlude there was a change in leadership at the State Bar that some
8 observers saw as beneficial to Girardi. Howard Miller, who worked at Girardi Keese, was elected
9 State Bar president and Girardi attended his 2009 swearing in. Under Miller's leadership, the Bar's
10 board of trustees forced out the longtime executive director, and Miller recruited Joe Dunn, another
11 friend of Girardi, to fill the post.

12 148. Before Dunn assumed his new position in 2010, the State Bar held its annual
13 convention in Monterey. The Dole matter had been referred to the State Bar for investigation.
14 Girardi Keese decided to pay for a lavish party at the convention for retiring Chief Justice Ron
15 George. Girardi flew in an orchestra and hired Paul Anka to perform under a huge white tent on
16 resort grounds.

17 149. Because new State Bar president Howard Miller worked for Girardi's firm, the Dole
18 investigation was assigned to a private attorney/special prosecutor who had never handled a bar
19 investigation before. This attorney, Jerome Falk, decided not to pursue charges against Girardi,
20 explaining that the fees and public scolding by the federal court were punishment enough.

21 150. Many legal insiders were shocked at what they considered a slap on the wrist.

22 151. Alex Kozinski, former chief judge for the 9th Circuit Court of Appeals, stated that
23 if the State Bar had taken the investigation more seriously, "Maybe some of this would never have
24 happened," referring to the subsequent financial harm caused by Girardi to numerous former
25 clients.

1 **THE PREMPRO CASE**

2 152. In 2014, while the State Bar was under the control of Girardi's allies, *Judith Allen*
3 *et al. v. Girardi Keese*, case number 2:14-cv-02721, was filed in the U.S. District Court for the
4 Central District of California. In the lawsuit 30 elderly women who had developed cancer after
5 taking the hormone-replacement drug Prempro claimed Girardi took \$12.5 million of their \$17
6 million settlement. Girardi settled the case for an undisclosed amount after the plaintiffs' counsel
7 obtained Girardi Keese's bank records and filed a detailed motion for contempt.

8 153. In the *Prempro* case, Girardi hired Mr. Edward Panelli through JAMS to distribute
9 settlement funds to Girardi Keese's elderly clients. A longtime lawyer for the firm, James
10 O'Callahan, sent letters to the clients claiming Panelli had delayed their full payment. "Although
11 I wish the check was for the higher amount, I am happy that Justice Panelli has approved this
12 interim payment," O'Callahan wrote in one such letter. These statements to the clients were false.

13 154. Upon information and belief, the State Bar took no action for Girardi's illegal
14 conduct in the *Prempro* case.

15 **OTHER CASES WHERE ALLEGATIONS OF WRONGDOING AROSE**
16 **THAT SEEMINGLY WENT IGNORED BY THE STATE BAR**

17 155. When lawsuits did come, Girardi often successfully had them thrown out of court.
18 Sometimes, Girardi's efforts to find a friendly venue were outright brazen. When Girardi could
19 not get a lawsuit against him thrown out of court or placed in arbitration with a familiar private
20 judge, he would stall and delay discovery. Girardi Keese often racked up sanctions as it flouted
21 discovery deadlines in cases. Meanwhile, Girardi's repeated sanctions for refusing to turn over
22 financial documents in various lawsuits against him never resulted in investigation by the Bar.

23 156. In 2011, *Prakashpalan et al. v. Engstrom Lipscomb & Lack*, case number
24 SC112882, was filed in the Superior Court of the State of California, County of Los Angeles. In
25 the case, victims of the 1994 Northridge earthquake allege Girardi Keese and other firms
26 misappropriated funds from an insurance coverage settlement. The case was dismissed as time

1 barred.

2 157. Upon information and belief, the State Bar took no action for Girardi's illegal and
3 unethical conduct, and in fact actively concealed said wrongdoing for its own benefit.

4 158. In 2012, *Britton v. Girardi*, case number BC492978, was filed in the Superior Court
5 of the State of California, County of Los Angeles. In this case, additional victims of the 1994
6 Northridge earthquake allege Girardi misappropriated funds from an insurance coverage
7 settlement. The case was ultimately dismissed as time-barred, with an appellate panel using the
8 *Prakashpalan* case as precedent.

9 159. Upon information and belief, the State Bar took no action for Girardi's illegal and
10 unethical conduct, and in fact actively concealed said wrongdoing for its own benefit.

11 160. Also in 2012, another group of former clients alleged Girardi misappropriated \$22
12 million from a \$100 million settlement he won from insurers in 1997 to cover damage from the
13 1994 Northridge earthquake. State courts threw out those claims, saying the clients had waited
14 too long to file suit.

15 161. Upon information and belief, the State Bar took no action for Girardi's illegal and
16 unethical conduct, and in fact actively concealed said wrongdoing for its own benefit.

17 162. In 2017, *Richard Fair v. Thomas V. Girardi et al.*, case number BC665472, was
18 filed in the Superior Court of the State of California, County of Los Angeles. Residents of the
19 Carousel housing tract in Carson, California, allege Girardi misappropriated funds from a
20 settlement reached with Shell Oil Co. and Dole Food Co. to resolve claims that the companies
21 concealed that the residents' neighborhood was built on a toxic waste dump. Girardi Keese tried
22 and failed to have the case transferred to a retired judge in 2019.

23 163. Upon information and belief, the State Bar took no action for Girardi's illegal and
24 unethical conduct, and in fact actively concealed said wrongdoing for its own benefit.

25 164. In 2018, Girardi himself penned a letter to a litigation funding company named Law

1 Finance Group. Girardi apparently was delinquent in repaying a loan and wrote to Law Finance
2 Group pretending that he had no idea how repayment was to occur. Girardi wrote that he "totally,
3 negligently violated the agreement" to pay the lender out of the settlement funds from a specific
4 case. "I truly did not appreciate the fact that I should have been distributing money to pay it off
5 out of one case," he wrote. "From the bottom of my heart, it was innocent."

6 165. Upon information and belief, the State Bar took no action for Girardi's illegal and
7 unethical conduct, and in fact actively concealed said wrongdoing for its own benefit.

8 166. In 2019, the case *Joseph Ruigomez et al. v. Girardi Keese et al.*, case number
9 19STCV22296, was filed in the Superior Court of the State of California, County of Los Angeles.
10 A family whose home was destroyed in the 2010 San Bruno natural gas pipeline explosion alleged
11 that Girardi took millions of dollars from their settlement with Pacific Gas & Electric Co. Girardi
12 settled the case for \$12 million in 2020 but never disbursed the proceeds to Ruigomez. Ruigomez's
13 lifelong friend, Kimberly Archie, had supported him through the entire ordeal and went on to
14 consult for Girardi Keese as a liability expert and case manager. Later, Archie used her skills and
15 connections at the firm to help Ruigomez figure out what was going on. Together, they discovered
16 troubling signs, including lawsuits from lenders alleging Girardi was defaulting on millions of
17 dollars in loans.

18 167. The Ruigomez family hired Abir Cohen Treyzon Salo LLP — which subsequently
19 employed several former Girardi Keese attorneys -- and sued Girardi Keese in June 2019. In
20 January 2020, Girardi agreed to pay the family \$12 million after mediation with JAMS arbitrator
21 Howard Miller (the former Girardi Keese partner). Girardi paid \$1 million that month but missed
22 a deadline to pay the rest, prompting a state court judge to enter an \$11 million public judgment
23 against Girardi in April 2020. The judge overseeing the case, Holly Purjie, was a former State Bar
24 president. As the case progressed, more and more evidence was discovered indicating that Girardi
25 had spent his client's money. Judge Purjie raised the possibility of reporting Girardi's behavior to

1 the Bar, but Girardi assured the judge that he would repay the money owed.

2 168. Upon information and belief, the State Bar took no action for Girardi's illegal and
3 unethical conduct, and in fact actively concealed said wrongdoing for its own benefit.

4 169. In 2020, *Judy Selberg v. Thomas V. Girardi et al.*, case number 20STCV41541,
5 was filed in the Superior Court of the State of California, County of Los Angeles. In the lawsuit,
6 a woman whose husband died in a boating accident alleges Girardi took \$450,000 of her \$500,000
7 wrongful death settlement.

8 170. Upon information and belief, the State Bar took no action for Girardi's illegal and
9 unethical conduct, and in fact actively concealed said wrongdoing for its own benefit.

10 171. Also in 2020, the Law Offices of Philip Sheldon claimed in 2008 and 2009 that a
11 number of clients hired Girardi to represent them against TXI cement manufacturers for exposure
12 to toxic fumes. Since settling the TXI cases in 2015, Girardi has not paid plaintiffs any of the fees
13 owed pursuant to the fee sharing agreement and have not reimbursed plaintiffs for their costs.
14 Instead, Girardi executed a scheme (letters sent by Robert Finnerty to the clients that blame the
15 delay on the settlement administrator) to keep plaintiffs unaware that they had received fees from
16 the TXI cases and prevented plaintiffs from learning that the money for fees and costs had been
17 received by Girardi Keese. The plaintiffs claimed in the Complaint that Girardi made promises to
18 make payments from September 2018 to October 2020, but never followed through.

19 172. Upon information and belief, the State Bar took no action for Girardi's illegal and
20 unethical conduct, and in fact actively concealed said wrongdoing for its own benefit.

21 **THE LION AIR CASE**

22 173. In October 2018, Lion Air Flight 610 crashed, killing all 189 individuals on boards.
23 In late 2018, *Lion Air Flight JT 610 Crash*, case number 1:18-cv-07686, was filed in the U.S.
24 District Court for the Northern District of Illinois against Boeing, the manufacturer of the plane.
25 Nearly a dozen families, including widows and minor children, retained Girardi Keese to represent

1 them in seeking to recover for the tragic loss of their loved ones. The litigation was individually
2 settled for those clients in early 2020 for a substantial, but confidential sum.

3 174. Upon information and belief, Girardi and his firm prevented a significant portion
4 of the settlement money, and potentially all of it, from ever reaching the victims of the crash.
5 Girardi instead kept the money for his own purposes and doled it out to friends and family, all the
6 while evading attempts by his clients to gain access to it.

7 175. Subsequently, in a lawsuit filed in Illinois against Girardi and Girardi Keese, five
8 clients alleged Girardi took at least \$2 million from settlements reached with Boeing over the
9 deaths of their relatives in a 2018 plane crash.

10 176. Per the complaint, within a few weeks of Lion Flt 610 crashing off the coast of
11 Indonesia, Tom Girardi's team arrived in Jakarta and knocked on the door of the victim's family.
12 Girardi said he was one of the best lawyers in the United States and (became a) new widow and
13 orphan in 2018. Sign up for him and you'll get millions of dollars from the plane maker Boeing.
14 They handed out a glossy booklet that advertised Girardi's takeover of airlines and plane makers
15 for a quarter of a century and the billions of dollars he had earned for his customers.

16 177. Attorneys for the plaintiffs alerted the Chicago federal judge overseeing the case in
17 December about the missing funds. Girardi had failed to pass on millions due to his clients, widows
18 and orphans. An attorney for Girardi and his law firm admitted the money was missing from a
19 trust account, prompting the judge to freeze the assets of Girardi and Girardi Keese.

20 178. Judge Durkin referred Girardi to federal prosecutors and in so stated, "If you touch
21 client money, you're going to be disbarred and quite possibly charged criminally" ... "someone as
22 experienced as Mr. Girardi knows that as well as anyone."

23 179. Upon information and belief, the State Bar took no action for Girardi's illegal and
24 unethical conduct, and in fact actively concealed said wrongdoing for its own benefit.
25

1 **GIRARDI'S CONTROL OVER THE STATE BAR**

2 180. Girardi was not shy about spending money on his well-connected friends or to make
3 new ones. Every year he hosted multiple lavish parties that were attended by politicians, judges,
4 prominent attorneys, prosecutors, and State Bar employees and officials. He also hosted regular
5 lunches and other meals at Morton's, The Palm, and the Jonathan Club that were attended by
6 politicians, local officials, and State Bar employees. Girardi provided generous gifts and benefits
7 to those he knew or was trying to meet. For example, he had a private jet which he used to fly
8 friends and colleagues for work or pleasure, including several State Bar employees and officials.

9 181. California State Bar Staffers received annual invitations to Las Vegas legal
10 conference where Girardi hosted over-the-top parties at the Wynn casino featuring celebrity
11 entertainers.

12 182. While under investigation for misconduct in 2010, Girardi bankrolled a lavish
13 retirement bash for the chief justice of the California Supreme Court, which oversees the Bar.

14 183. In 2011 Jayne Kim, a former federal prosecutor, was hired to professionalize the
15 disciplinary system at the Bar. She became Layton's supervisor. Layton's relationship with
16 Girardi and unauthorized political activities eventually raised concerns for Kim. She reported her
17 concerns to Dunn, who in turn moved his friend Layton out from under Kim's supervision.

18 184. In 2013, the Mongolian consul contacted the State Bar for advice for setting up a
19 regulatory system for attorneys. Dunn decided to travel to Mongolia along with Layton and
20 Howard Miller, the former bar president, in January 2014.

21 185. In April 2014, Layton and Miller traveled to Mongolia a second time. Dunn stated
22 that no Bar fund would be used on the trip. However, he ended up purchasing the airfare for
23 himself and Miller with a credit card belonging to the State Bar. Before he submitted his expense
24 report, Girardi sent a check for \$5,000.00 to the Bar, supposedly to cover the unauthorized
25 expenses by Dunn and Miller in Mongolia. On August 27, 2014, more than seven months after

1 the first trip to Mongolia, and nearly five months after the check was received by the Bar, no
2 accounting entry had been made to credit the donation against expenses. Nonetheless, the
3 \$5,000.00 check was insufficient to cover the full \$7,088.44 in expenses incurred by the Bar on
4 the agency credit card held by Dunn.

5 186. In 2014, corporate litigator Craig Holden decided to run for president of the Bar.
6 He was instructed to go to lunch with Tom Layton which surprised him considering Layton's low-
7 level position at the Bar. Holden agreed to meet Layton at Morton's for lunch whereupon Girardi
8 arrived and joined the meeting. Girardi instructed Holden of his expectations for Bar leadership.
9 The message, Board lawyers would later write in a confidential internal report, was "that the power
10 broker on whose support Holden's election depended, was in fact Girardi."
11

12 187. After Dunn assumed the position of Executive Director of the State Bar, Girardi's
13 influence grew. This influence could be seen at the annual convention of the Consumer Attorneys
14 Association of Los Angeles held in Las Vegas where Girardi sponsored lavish events. Layton
15 regularly attended, as did a number of other Bar attorneys and judges with ties to Girardi.

16 188. At the 2014 convention, five bar employees, including Dunn, were invited to speak
17 on a panel entitled "Avoiding Trouble with the State Bar." A later internal report would describe
18 the event as "an example where Dunn bent the normal rules to accommodate a request perceived
19 as helpful to Girardi."

20 189. Though Jayne Kim no longer supervised Layton, she and Dunn clashed on whether
21 her lawyers and investigators should be permitted to attend the Las Vegas convention. In July
22 2014, Kim filed a formal complaint alleging that Dunn and others in power were serving "private
23 or personal agendas." She addressed Layton and wrote "I know no one within the State Bar that
24 can explain in any meaningful detail Layton's duties and responsibilities." She noted "Layton's
25 close ties to Tom Girardi ...and the appearance of impropriety."

1 197. There were numerous complaints to the State Bar about Girardi at this point.
2 Because of the ongoing litigation, the Bar had to refer these complaints out to private attorneys for
3 investigation. Not surprisingly, none of these complaints resulted in any public discipline to
4 Girardi.

5 198. In 2019, the State Bar reached settlements with Layton and a few others. The bases
6 of the settlements were not disclosed.

7 199. According to the Halpern May Report, Girardi maintained connections to the State
8 Bar at nearly every level. One witness revealed, "[i]t's like Girardi became part of the fabric of the
9 State Bar." The Halpern May Report concluded that Girardi had connections to the Board, the
10 Executive Director's Office, and OCTC, both at the managerial and line prosecutor and investigator
11 level, and that spanned decades.

12 200. In all, the Investigative Report revealed evidence connecting at least nine State Bar
13 employees or Board members who had connections to or accepted items of value, travel, or meals
14 from Girardi at the time they were at the State Bar, State Bar Court, or the Board. Three of those
15 individuals were involved in the closure of State Bar cases against Girardi, and it has been
16 concluded that two of these individuals had conflicts-of-interest at the time they handled the cases.

17 **THE STATE BAR'S VAGUE ADMISSIONS OF FAILURES AND**
18 **SECRET INTERNAL INVESTIGATIONS**

19 201. Girardi maintained a spotless record with the Bar for decades despite more than
20 100 law suits against him and his firm, including numerous claims of legal malpractice and
21 misappropriation of funds. On March 5, 2021, the State Bar notified Girardi that it planned
22 disciplinary action against him. T State he Bar said the charges against Girardi alleged that "he
23 has willfully misappropriated client funds and refused to obey a court order."

24 202. The State Bar acknowledged on or about June 21, 2021 that its investigators had
25 mishandled years of complaints against Tom Girardi. The regulatory agency's Board of Trustees
26 said in a news release that an audit of Girardi's disciplinary file "revealed mistakes made in some

1 investigations over the many decades of Mr. Girardi's career going back some 40 years and
2 spanning the tenure of many Chief Trial Counsels.” Filings in those proceedings indicate that the
3 State Bar found evidence that Girardi had committed misconduct in three cases in the 1990s but
4 chose to impose punishment in 1999 by private reproof, which kept his law license pristine and
5 the public in the dark.

6 203. The audit, conducted by an outside consultant, "identified significant issues" in the
7 "investigation and evaluation of high-dollar, high volume trust accounts."

8 204. In August 2021, Girardi was disbarred from California Federal Court.

9 205. On or about July 1, 2022, Girardi was finally disbarred by the State Bar of
10 California with a finding of 14 counts of violating ethics rules and California law for embezzling
11 millions from his clients.

12 206. However, the Bar vowed to keep the findings of the investigation private and not
13 released to the public, thus making it impossible for the numerous class members to know the full
14 extent of their damages.

15 207. On September 30, 2022, it was revealed that the State Bar was bringing two former
16 employees to court in a bid to force them to divulge what they know about the suspected corruption
17 at the agency that allowed Girardi to avoid discipline for decades and resulted in thousands of
18 victims being owed millions of dollars.

19 208. On March 10, 2023, the Halpern May Report was released. This investigation
20 revealed for the first time the true extent of the wrongs committed by the State Bar of California
21 and its employees with regard to Girardi and his law firm.

22 209. The State Bar opened 205 disciplinary matters about Girardi over a 40-year period
23 involving allegations of trust accounting violations, theft, perjury, and other serious infractions. It
24 was only in 2021, after Girardi failed to contest a disciplinary complaint, that the State Bar meted
25 out any public discipline.

1 are accurate, they suggest the firm not only violated multiple trust account rules, but that in 2013
2 Girardi had paid the plaintiffs in that case at least \$4.3 million from settlement funds from other
3 cases. "And that suggests, in effect, a Ponzi scheme, where he's using money from basically
4 subsequent cases to fund his and his firm's obligations on prior cases," Wertlieb said.

5 216. On February 1, 2023, the Department of Justice announced two indictments against
6 Girardi charging him with wire fraud, based upon allegations that he stole millions of dollars from
7 his clients as part of a lengthy fraud scheme.

8 217. The financial improprieties alleged were precisely the sort of
9 misconduct the State Bar was supposed to investigate. The bar fields about 16,000 complaints a
10 year, primarily from unhappy clients, but it also has the power to initiate investigations based on
11 news reports, lawsuits or referrals from judges.

12 218. Plaintiffs and the Class Members were unlawfully, illegally, and wrongfully
13 harmed by Girardi and Girardi Keese who in turn were actively protected and shielded from
14 repercussions by the State Bar and its employees even though the State Bar was fully aware of the
15 unlawful, illegal and harmful actions being committed by Girardi and Girardi Keese against their
16 clients.

17 219. Defendants conduct has caused extreme financial, emotional, psychological, and
18 physical distress and harm to plaintiffs and the Class Members.

19 220. Defendants' conduct has caused Plaintiffs and the Class Members damages
20 including, but not limited to, monetary damages in the form of stolen settlement funds and
21 judgments, loss of enjoyment of life, and intentional infliction of emotional distress. Defendants
22 are liable to Plaintiffs and the Class Members for actively concealing and protecting the unlawful,
23 illegal, and harmful actions being committed by Girardi and Girardi Keese against their clients.
24 Defendants all benefited from the unlawful, illegal, and harmful actions being committed by
25 Girardi and Girardi Keese against their clients.

1 notified of the pendency of this action by mail, electronic mail, the Internet, or published
2 notice.

3 b. **Common Questions Predominate**: Common questions of law and fact exist as to all
4 Class Members. These questions predominate over any questions affecting only
5 individual class members. These common legal and factual questions include, without
6 limitation:

7 c. **Typicality**: Plaintiffs' claims are typical of the claims of the Class Members. Plaintiffs
8 and the Class Members sustained losses and damages arising out of Defendants'
9 common course of conduct in violation of California law as complained of herein. The
10 losses and damages of each class member were caused directly by Defendants'
11 wrongful conduct in violation of California law as alleged herein.

12 d. **Adequacy**: Plaintiffs will fairly and adequately protect the interests of the Class
13 Members. Plaintiffs' interests do not conflict with the interest of the Class Members
14 Plaintiffs seek to represent. Plaintiffs have retained counsel competent and experienced
15 in complex litigation, and Plaintiffs intend to prosecute this action vigorously.

16 e. **Superiority**: A class action is superior to other available means for the fair and efficient
17 adjudication of this controversy since individual joinder of all Class Members is
18 impracticable. Class action treatment will permit a large number of similarly situated
19 persons to prosecute their common claims in a single forum simultaneously, efficiently,
20 and without the unnecessary duplication of effort and expense that numerous individual
21 actions would engender. Furthermore, as the damages of each individual Class Member
22 may be relatively small, the expense and burden of individual litigation would make it
23 difficult or impossible for individual members of the class to redress the wrongs done
24 to them, while an important public interest will be served by addressing the matter as a
25 class action. The costs to the court system of adjudication of such individualized

1 litigation would be substantial. Individualized litigation would also present the
2 potential for inconsistent or contradictory judgments. Plaintiffs are unaware of any
3 difficulties that are likely to be encountered in the management of this action that would
4 preclude its maintenance as a class action.

5 **FIRST CAUSE OF ACTION**
6 **(NEGLIGENCE UNDER THE CALIFORNIA TORT CLAIMS ACT)**
7 **(Against All Defendants)**

8 225. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
9 herein.

10 226. To establish a cause of action for negligence, a plaintiff must plead facts showing
11 a legal duty to use due care, a breach of such legal duty, and that the breach was the proximate or
12 legal cause of the resulting injury. (See, *Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917.)

13 227. Gov. Cod. 815.2 holds “(a) A public entity is liable for injury proximately caused
14 by an act or omission of an employee of the public entity within the scope of his employment if
15 the act or omission would, apart from this section, have given rise to a cause of action against that
16 employee or his personal representative.

17 228. Government Code, section 815.6 provides: “Where a public entity is under a
18 mandatory duty imposed by an enactment that is designed to protect against the risk of a particular
19 kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure
20 to discharge the duty unless the public entity establishes that it exercised reasonable diligence to
21 discharge the duty.” Application of section 815.6 requires that the enactment requires that a
22 particular action be taken or not taken. (*Guzman v. County of Monterey* (2009) 46 Cal.4th 887,
23 898). Therefore, to constitute a mandatory duty, there must be a specific enactment that
24 “affirmatively imposes the duty and provides implementing guidelines.” (*Ibid.*; see also, *Srouy v.*
25 *San Diego Unified School District* (2022) 2022 WL 557183.) Moreover, an enactment does not
26 create a mandatory duty where the function required involves exercise of discretion. (*Department*

1 part, ***unless the elected official and the public entity are named as codefendants in the same***
2 ***action***, a public entity is not liable to a plaintiff under this part for any act or omission of an elected
3 official employed by or otherwise representing that public entity, ***which act or omission***
4 ***constitutes an intentional tort***, including, but not limited to, harassment, sexual battery, and
5 ***intentional infliction of emotional distress***. (b) If the elected official is held liable for an
6 ***intentional tort*** other than defamation in such an action, the trier of fact in reaching the verdict
7 shall determine if the act or omission constituting the intentional tort arose from and was directly
8 related to the elected official's performance of his or her official duties. If the trier of fact
9 determines that the act or omission arose from and was directly related to the elected official's
10 performance of his or her official duties, the public entity shall be liable for the judgment as
11 provided by law. For the purpose of this subdivision, employee managerial functions shall be
12 deemed to arise from, and to directly relate to, the elected official's official duties.

13 239. To establish a cause of action for intentional infliction of emotional distress, a
14 plaintiff must plead facts showing: (1) extreme and outrageous conduct by the defendant with the
15 intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the
16 plaintiff's suffering severe or extreme emotional distress; (3) and actual and proximate causation
17 of the emotional distress by the defendant's outrageous conduct. (See, *Fletcher v. Western National*
18 *Life Ins. Co.* (1970) 10 Cal.App.3d 376, 394.)

19 240. Prior to 2018, attorney Board members were not appointed but instead were elected.

20 241. Defendants' conduct with regard to Tom Girardi and Girardi Keese has been
21 extreme and outrageous to the point that it shocks the conscience and norms of a civilized society
22 in that they 1) actively protected Tom Girardi and Girardi Keese from ethical complains and
23 discipline for decades; 2) they intentionally disregarded valid complaints from members of the
24 public with the sole purpose to continue reaping the financial and political benefits they enjoyed
25 from the relationship with Tom Girardi and Girardi Keese; 3) they actively accepted financial gifts

1 and benefits from Tom Girardi and Girardi Keese in exchange for their active participation in
2 disposing of valid complaints from members of the public; 4) they removed and silenced
3 employees of the State Bar who raised ethical and legal concerns about the relationship between
4 Defendants and Tom Girardi and Girardi Keese; and 5) they allowed Tom Girardi to exercise
5 unfettered and unsupervised control over the agency.

6 242. The plaintiffs and Class Members have suffered emotional, psychological, and
7 physical distress because of Defendants' actions.

8 243. Defendants' actions are the actual and proximate cause of the harm.

9 **THIRD CAUSE OF ACTION**
10 **(GROSS NEGLIGENCE / RECKLESS MISCONDUCT)**
11 **(Against All Defendants)**

12 244. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
13 herein.

14 245. Gross negligence requires a showing of the traditional elements of negligence, as
15 well as conduct reflecting either want of even scant care or an extreme departure from the ordinary
16 standard of care. (*Chavez v. 24 Hour Fitness USA, Inc.* (2015) 238 Cal.App.4th 632, 640.)

17 246. "Recklessness refers to a subjective state of culpability greater than simple
18 negligence, which has been described as a 'deliberate disregard' of the 'high degree of probability'
19 that an injury will occur. Recklessness, unlike negligence, involves more than 'inadvertence,
20 incompetence, unskillfulness, or a failure to take precautions' but rather rises to the level of a
21 'conscious choice of a course of action...with knowledge of the serious danger to others involved
22 in it.'" (See, *Delany v. Baker* (1999) 20 Cal.4th 23 [82 Cal.Rptr.2d 610, 971 P.2d 98])

23 247. Defendants' conduct with regard to Tom Girardi and Girardi Keese has been
24 extreme and outrageous to the point that it shocks the conscience and norms of a civilized society
25 in that they 1) actively protected Tom Girardi and Girardi Keese from ethical complains and

1 discipline for decades; 2) they intentionally disregarded valid complaints from members of the
2 public with the sole purpose to continue reaping the financial and political benefits they enjoyed
3 from the relationship with Tom Girardi and Girardi Keese; 3) they actively accepted financial gifts
4 and benefits from Tom Girardi and Girardi Keese in exchange for their active participation in
5 disposing of valid complaints from members of the public; 4) they removed and silenced
6 employees of the State Bar who raised ethical and legal concerns about the relationship between
7 Defendants and Tom Girardi and Girardi Keese; and 5) they allowed Tom Girardi to exercise
8 unfettered and unsupervised control over the agency.

10 248. The plaintiffs and Class Members have suffered emotional, psychological, and
11 physical distress because of Defendants' actions.

12 249. Defendants' actions are the actual and proximate cause of the harm.

13 **FOURTH CAUSE OF ACTION**
14 **(NEGLIGENT SUPERVISION)**
15 **(Against All Defendants)**

16 250. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
17 herein.

18 251. To establish negligent supervision, a plaintiff must show that a person in a
19 supervisorial position over the actor had prior knowledge of the actor's propensity to do the bad
20 act. *Margaret W. v. Kelley R.* (2006) 139 Cal.App.4th 141, 156–157, 42 Cal.Rptr.3d 519.

21 252. Joe Dunn acting as Executive Director for the State Bar of California and Howard
22 Miller, acting as the President of the State Board of California, did allow and encourage Tom
23 Lunley, a low-ranking employee, to actively participate on the disciplinary processes addressing
24 complaints made against Tom Girardi and Girardi Keese.

25 253. Joe Dunn acting as Executive Director for the State Bar of California and Howard

1 Miller acting as the President of the State Board of California, did allow and encourage Tom
2 Lunley to act as the go-between for Tom Girardi and Girardi Keese and powerful politicians,
3 attorneys, elected officials, judges and business tycoons, with the sole purpose of promoting Tom
4 Girardi and Girardi Keese for financial gain and to the detriment of plaintiffs and Class Members.

5 254. The State Bar of California repeatedly failed to supervise Joe Dunn, Howard Miller,
6 Tom Lunley and John Noonan for decades, allowing them to actively work on behalf of Tom
7 Girardi and Girardi Keese, and to the detriment of plaintiffs and Class Members.

8 **FIFTH CAUSE OF ACTION**
9 **(CIVIL CONSPIRACY)**
10 **(Against All Defendants)**

11 255. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
12 herein.

13 256. “Conspiracy is not a cause of action, but a legal doctrine that imposes liability on
14 persons who, although not actually committing a tort themselves, share with the immediate
15 tortfeasors a common plan or design in its perpetration. By participation in a civil conspiracy, a
16 coconspirator effectively adopts as his or her own the torts of other coconspirators within the ambit
17 of the conspiracy. In this way, a coconspirator incurs tort liability co-equal with the immediate
18 tortfeasors.” (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510–511,
19 28 Cal.Rptr.2d 475, 869 P.2d 454 (Applied Equipment Corp.)

20 257. The act done and resulting damage to the plaintiff, not the conspiracy to act, is the
21 essence of civil conspiracy. (*Applied Equipment Corp.*, supra, 7 Cal.4th at p. 511, 28 Cal.Rptr.2d
22 475, 869 P.2d 454.) Consequently, in order to state a cause of action for civil conspiracy, “the
23 complaint must allege (1) the formation and operation of the conspiracy, (2) the wrongful act or
24 acts done pursuant thereto, and (3) the damage resulting from such act or acts.” (*Wise v. Southern*
25 *Pacific Co.*, supra, 223 Cal.App.2d at p. 64, 35 Cal.Rptr. at p. 660.) The existence of a civil
26 conspiracy makes each participant in the wrongful act responsible as a joint tortfeasor for all

1 damages resulting from the wrong, whether or not a participant was a direct actor and regardless
2 of the degree of his activity.

3 258. Defendants did conspire with each other in intentionally failing 1) to take any action
4 against Tom Girardi and Girardi Keese for decades of malfeasance; 2) actively concealing and
5 ignoring known wrongs committed by Tom Girardi and Girardi Keese as evidenced through
6 hundreds of complaints and lawsuits against; 3) allowing Tom Girardi to exert incredible control
7 and influence over the inner workings and functions of the State Bar of California; 4) allowing
8 Tom Girardi to personally select and control individual high ranking members within the State Bar
9 of California going back decades; 5) they actively accepted financial gifts and benefits from Tom
10 Girardi and Girardi Keese in exchange for their active participation in disposing of valid
11 complaints from members of the public; 6) they removed and silenced employees of the State Bar
12 who raised ethical and legal concerns about the relationship between Defendants and Tom Girardi
13 and Girardi Keese; and, 7) they knowingly allowed thousands of members of the public, and now
14 class members, of being victims of embezzlement in the amount of hundreds of millions of dollars.

15 259. The result of the conspiracy has been extreme financial and psychological damage
16 to plaintiffs and the Class Members.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs, on behalf of themselves and the Class Members, pray for
19 judgment against Defendants as follows:

- 20 a. An order that this action may proceed and be maintained as a class action;
21 b. For all other appropriate injunctive, declaratory and/or equitable relief;
22 c. For prejudgment interest and post-judgment interest at the maximum legal rate;
23 d. For an award of attorneys' fees and costs incurred in the investigation, filing and
24 prosecution of this action;
25 e. Actual, general, and special and consequential damages, to the extent allowed by law;

1 f. Costs of suit; and

2 g. Such other relief as the Court may deem just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs demand a trial by jury for themselves and the Class Members on all claims so
5 triable.

6 DATED: September 7, 2023

7 **OSBORN LAW P.C.**

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11 **DANIEL A. OSBORN, ESQ.**

12 *Attorneys for Plaintiffs and the Class Members*