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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF SAN FRANCISCO**

14 **CGC-24-619101**

15 DR. GEORGE JACOB,
16 Plaintiff,

17 vs.

18 BAY.org dba BAY ECOTARIUM and/or
19 AQUARIUM OF THE BAY, and DOES 1
20 through 10, inclusive,

21 Defendants.

CASE NO.

COMPLAINT FOR DAMAGES:

1. **RACE / NATIONAL ORIGIN
DISCRIMINATION IN EMPLOYMENT -
WRONGFUL DISCHARGE - FEHA**
2. **RETALIATION IN VIOLATION OF
PUBLIC POLICY REGARDING
ENGAGING IN PROTECTED ACTIVITY
FOR REPORTING UNFAIR
EMPLOYMENT PRACTICES
(Whistleblowing);**
3. **DEFAMATION (Slander Per-Se);**
4. **FRAUD & DECEIT;**
5. **BREACH OF WRITTEN EMPLOYMENT
CONTRACT;**
6. **BREACH OF THE IMPLIED-IN-FACT
CONTRACT OF EMPLOYMENT; and,**
7. **INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

DEMAND FOR JURY TRIAL

1 Plaintiff, Dr. GEORGE JACOB, alleges as follows:

2 **I. INTRODUCTION**

3 1. This is a case of retaliation for reporting and complaining about employees
4 engaging in fraud, nefarious illegal conduct, egregious misconduct, and dereliction of duties,
5 conflicts of interest, etc. The Defendant, BAY.org dba the BAY.org and/or AQUARIUM OF
6 THE BAY (hereinafter collectively referred to as either “BAY.org,” “the Aquarium” or
7 “Defendant”), a 501(c)(3) [Title 26 of the United States Code] nonprofit organization exempt
8 from federal income tax, has refused to take the necessary steps to abate, ameliorate, prevent,
9 and eliminate the unfair employment practices described below, and hold accountable derelict
10 staff for financial and other mismanagement of resources and violation of company policies..
11 Instead, the BAY.org [constructively] terminated Plaintiff.

12 **II. JURISDICTION, VENUE AND PARTIES**

13 2. During the relevant times herein mentioned, Plaintiff, DR. GEORGE JACOB
14 (hereinafter referred to as either “Plaintiff JACOB” or “Plaintiff”) was a citizen of Canada and a
15 resident in the City of San Francisco, State of California.

16 3. Defendant BAY.org is a merger between The Bay Institute (established 1984) and
17 the Aquarium of the Bay (established 1996) in 2009. Headquartered in the City of San
18 Francisco, California, the BAY.org is dedicated to protecting, restoring, and inspiring
19 conservation of the San Francisco Bay, from the Sierra to the sea. The BAY.org is an amalgam
20 of seven unique operational branches located across the Bay Area and up until recently was
21 accredited by the Association of Zoos & Aquariums (“AZA”) and is affiliated to the Smithsonian
22 Institution, both relationships initiated and secured by the Plaintiff, George Jacob.

23 4. Venue in this Court is proper because the unlawful employment practices and
24 civil injuries and claims alleged herein occurred within the City of San Francisco, County of San
25 Francisco.

26 5. Plaintiff is ignorant of the true names or capacities of the Defendants sued here
27 under the fictitious names DOE 1 through DOE 10, inclusive. Plaintiff is informed and believes
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1 that each DOE Defendant was responsible in some manner for the occurrences and injuries
2 alleged in this Complaint.

3 6. At all times mentioned in the causes of action into which this paragraph is
4 incorporated by reference, each Defendant was the agent or employee of the BAY.org. In doing
5 the things alleged in the causes of action into which this paragraph is incorporated by reference,
6 each Defendant was acting within the course and scope of the agency or employment and was
7 acting with the consent, permission, and authorization of the BAY.org. All actions of each
8 Defendant alleged in the causes of action into which this paragraph is incorporated by reference
9 were ratified and approved by the officers or managing agents of the BAY.org.

10 7. In doing the things hereinafter alleged, the individual Defendants, whether named
11 or unnamed, were acting in concert with and under the direction, or with the express or implied
12 ratification, of their superiors, supervisors and employer and the named Defendants. Plaintiff is
13 informed and believes and thereon alleges that the conduct of the individually named and
14 unnamed Defendants was known to the other Defendants and such conduct was expressly or
15 impliedly condoned and ratified by the named Defendants. Plaintiff is further informed and
16 believes that the named Defendants failed to criticize, censure, terminate, suspend, or otherwise
17 take any action against the unnamed Defendants once informed of their conduct.

18 8. Damages in this matter exceed and are greater than \$25,000 thereby subject to the
19 San Francisco County Superior Court’s unlimited jurisdiction.

20 **III. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 9. Plaintiff alleges that he has exhausted all available administrative remedies
22 required with reference to his action in bringing this lawsuit. Plaintiff has obtained the necessary
23 Right-To-Sue letter from the California Civil Rights Department (“CRD”), dated September 10,
24 2024.

25 **IV. FACTUAL ALLEGATIONS**

26 10. In or about July 2016, while residing in Alberta, Canada, Plaintiff, DR. GEORGE
27 JACOB, FRCGS [Royal Canadian Geographical Society’s College of Fellows], male of Indian
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1 descent, currently age 59, having two (2) Masters of Museum Studies and a D.Phil. in tourism
2 management and other major prolific achievements to his credit [e.g., author of books, articles,
3 other trade industry publications, countless awards, etc.], and 27 years of experience in the non-
4 profit museums and science industry and running public institutions, was recruited by Mark
5 Oppenheimer & Associates, an executive search firm in San Francisco specifically retained by
6 BAY.org, and asked if he would be interested in being the next President / CEO for the BAY.org
7 in San Francisco. Plaintiff JACOB expressed interest for the position and was interviewed with
8 the BAY.org search committee via zoom / video.

9 11. In October 2016, Plaintiff JACOB was flown to San Francisco, California, to
10 meet with the BAY.org search committee and to search for new housing.

11 12. On or about December 21, 2016, Plaintiff JACOB was awarded the President and
12 CEO position with the BAY.org and entered into a written contract of employment, the drafting
13 of which was performed, and the terms of which were decided, entirely by Defendant the
14 BAY.org.

15 13. After an exhaustive Executive search for the vacant President and CEO position,
16 six (6) months of interviews and thorough vetting, Plaintiff JACOB was hired to bring
17 significant and decisive changes to the organization, raise its profile, credibility and envision its
18 future transformation.

19 Said employment contract dated December 9, 2016 and executed on December 21, 2016,
20 provides in part:

21 “The Board’s objective in hiring you is to engender a step change in bay.org’s statute
22 among like organizations. **This will require substantial changes** to boost
23 contributed and earned revenue while ensuring that the organization has strong
24 financial controls; marketing, branding and audience engagement; advocacy and
25 policy work; and exhibitions, programing (sic) and facility utilization. **Such a strong**
26 **change agenda brings with it stress for the people involved. . . You are expected**
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1 **to integrate change management support into your business plan.**” (Emphasis
2 added.)

3 14. Pending the issuance of his O-1 non-immigrant VISA [individual who possesses
4 extraordinary ability in the sciences, arts, education, business, or athletics, or who has a
5 demonstrated record of extraordinary achievement in the motion picture or television industry
6 and has been recognized nationally or internationally for those achievements], Plaintiff JACOB’s
7 services were engaged as a consultant contractor for the period between January 1, 2017 –
8 January 31, 2017.

9 15. On or about February 1, 2017, after receiving his O1 Visa Plaintiff JACOB
10 became employed by the BAY.org as the President and CEO of the BAY.org. His resident stats
11 changed to Permanent Resident once he received his Green Card issued on November 29, 2017.
12 Moreover, prior to accepting employment with the BAY.org, the BAY.org was without a CEO
13 for almost a year.

14 16. The BAY.org was financially hemorrhaging, but this was not made known to
15 Plaintiff. Plaintiff had not been told that the BAY.org had filed for a bankruptcy [insolvency]
16 protection previously and that the former CEO who left in 2015 had borrowed seven million
17 dollars from various lenders. Plaintiff was assured by BAY.org that was solvent, but he was not
18 shown the debt-to-expense ratio or any existing bank covenants.

19 17. In or about February 2017, Plaintiff JACOB immediately conducted a financial
20 and technical audit and learned that the Aquarium had \$5.7 million dollars in debt, impossible
21 payment covenants, and a deferred maintenance estimate of \$1.7 million dollars on infrastructure
22 and equipment. Payroll was hitting between \$7.5 - \$8 million dollars for circa 147 fulltime and
23 30 parttime seasonal employees. Plaintiff JACOB also learned that there was no existing
24 endowment / donor fund in place and that the BAY.org Board members (hereinafter referred to
25 as the “Board”) barely paid their annual dues of \$10,000.00, let alone raise any funds from any
26 donors. Approximately six (6) months after Plaintiff started his employment, the Director of
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1 Finance was terminated by Plaintiff JACOB, with Board approval, for failing to provide clear
2 financials, reporting to work inebriated and withholding information.

3 18. After lengthy discussions between March - June 2017, the Board agreed with
4 Plaintiff JACOB that rather than renovate and repair a dated and old aquarium, a new
5 transformative vision was needed to bring new impetus to capital campaign and creating a donor
6 endowment fund. Thus, an internal restructure began in parallel with creating a new concept
7 design for a climate museum or the Bay Ecotarium - an iconic world class destination that could
8 bring massive economic impact and rebrand San Francisco as the green / blue capital of the
9 world.

10 19. In or about October 2017, the Board adopted Plaintiff JACOB's 2020 strategic
11 vision document / master plan, which was developed in consultation with the entire senior
12 management. An advisory board was created and Plaintiff JACOB began to receive letters of
13 support from universities and community institutions. The Board was also provided with
14 presentation materials, slide decks and video clips with talking points to raise funds.

15 20. In or about October 2018, Dr. Jill Biden (current First Lady of the United States)
16 delivered the key note address at the unveiling of Dr. Jacob's vision ceremony held at the Bentley
17 Reserve in San Francisco. In the ensuing six years, the Board failed to raise any money or reach
18 out to a single major donor – either to support the failing Aquarium infrastructure and cash flow
19 shortage or for the new climate museum initiative and establish an endowment. Plaintiff felt
20 abandoned. BAY.org continued to suffer financially with mounting debt, increasing cost of
21 operations, cost of insurance and low tourism numbers. BAY.org defaulted on covenants with
22 Union bank. The new head of Finance, hired from within, took over in or about December 2018.

23 21. In or about June 2019, Board Chair Ben Bleiman, Plaintiff and Union bank met to
24 discuss default with covenants [thresholds regarding debt to expense ratio]. Again, the Board
25 failed to raise any funds or even meet the BAY.org's annual give / get obligations (Board
26 members' obligations to either raise \$10,000 from donors or personally give \$10,000).

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1 22. On March 16, 2020, the BAY.org operations were shut down per City Covid-19
2 Public Health Shelter in Place ordinance for fourteen (14) months. While this resulted in thirty
3 (30%) staff lay-offs, the Aquarium was required to maintain 24x7 operations due to 24,000 live
4 animals requiring daily care, life support systems and maintenance around the clock, unlike other
5 museums, attractions and destinations in San Francisco. Even with this unprecedented existential
6 crisis, the Board failed to provide any solutions or generate fiscal support for the organization
7 during this extremely difficult time.

8 23. In or about March/April 2020, Board Chair Ben Bleiman told the City that the
9 Aquarium would have no choice but to release all the aquarium animals into the ocean. U.S.
10 Fish and Wildlife Service (“USFW”) became aware of Bleiman’s statement to the City and
11 notified Plaintiff. Alarmed, Plaintiff assured USFW that no animals would be released. Bleiman
12 admitted to Plaintiff that he had threatened to release the aquarium animals and Plaintiff
13 informed Bleiman that it would be a federal crime to release the animals without authorization,
14 as the Aquarium is a federally licensed collection of animals.

15 24. In or about April 2020, Plaintiff JACOB entered into negotiations with the U.S.
16 Department of the Treasury Community Development Financial Institutions Fund (“CDFI”) to
17 restructure Defendant BAY.org’s \$5.5 million dollar debt. Plaintiff JACOB simultaneously
18 secured \$1 million in CDFI emergency loan and renegotiated the lease terms with Pier 39 and the
19 Port of San Francisco. Plaintiff JACOB saved and protected the BAY.org from closure and
20 ensured the safety of the 24,000 animals in the aquarium. None of this would have happened
21 without Plaintiff’s efforts. The Board did nothing, with the exception of Steve Machtinger, to
22 extend any significant assistance with resolving the insolvency crisis. No one on the board was
23 doing any fundraising, and unlike many other museums, especially those with live animals,
24 Aquarium of the Bay had no endowment. While the board unanimously praised the
25 commendable hard work done by Plaintiff JACOB, they did nothing to help the financial
26 situation. Plaintiff JACOB was able to secure two Federal [CARES Act implemented by the
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1 Small Business Administration] Paycheck Protection Program (PPP) funding to cover payroll
2 costs including benefits, pay interest on mortgages, rent, and utilities, all with board approval.

3 25. In or about August 2020, there were no visitors to the Aquarium, so Plaintiff
4 JACOB decided to take on external design and master-planning projects, leveraging his unique
5 professional credentials to augment the BAY.org’s income/revenue and save staff jobs during the
6 COVID-19 shut down. Norway Oceanarium was the first such undertaking in October 2020. At
7 great personal risk of getting COVID-19, at the height of the pandemic, Plaintiff traveled to
8 Norway, staying in quarantine for fourteen days.

9 26. In or about August 19, 2020, Plaintiff JACOB sent an email of “High
10 Importance” to the Board highlighting twenty-three milestones achieved against impossible odds
11 in the first 23 weeks of the COVID-19 shutdown. Plaintiff JACOB further informs the Board of
12 his efforts to renegotiate rent waivers and reductions, thereby providing financial relief. He was
13 successful in his efforts, working non-stop on the project. Fundraising by the continued to be at
14 a standstill. Plaintiff JACOB repeatedly and invariably reminded the Board of escalating
15 accounts payables, loan obligations, back rents, PGE bills, and increasing insurance costs. The
16 Board again failed to provide any leadership, set its strategy and goals, provide financial
17 oversight and management, direction, proposals, suggestions, or business acumen that would
18 give fiscal guidance to Plaintiff JACOB regarding these troubling issues that affect the future of
19 BAY.org.

20 27. The aquarium traditionally engaged 24 to 30 Professional Association of Diving
21 Instructors (“PADI”) certified volunteer divers from the community. In or about 2021, Jon Fisher
22 befriended Director of Animal Care Melissa Schouest. Jon Fisher and his eleven year old
23 daughter Avery Fisher started diving in aquarium tanks without Plaintiff’s knowledge. Over the
24 next two years, Melissa Schouest began sharing grievances about Plaintiff to Jon Fisher. In or
25 about late 2021, Plaintiff learned that Jon Fisher was interested in raising funds the Aquarium,
26 though he had never met Fisher. Plaintiff JACOB in good faith welcomed Jon Fisher and his
27 interest in raising funds for the Aquarium during Covid and the subsequent re-opening years.
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1 28. In or about July 2021, Jon Fisher attempted to impose his own media press
2 release. The press release was about his daughter diving at the Aquarium. Plaintiff advised the
3 multimedia coordinator who was dealing with Jon Fisher that the Aquarium follows its own
4 protocols, not Fisher's. Eventually BAY.org put out a modified version of the press release.

5 29. In or about March 2022, in an effort to free up Plaintiff JACOB's time from his
6 regular duties and responsibilities, so that he could focus on Executive Leadership fundraising,
7 the Board suggested he delegate, in part, his duties and responsibilities to a General Manager for
8 the Aquarium, a position that did not yet exist. Plaintiff JACOB promoted Jaz Cariola in Guest
9 Services to the position of General Manager of Aquarium Operations with direct supervision of
10 IT, Animal Care, Facilities, Guest Services and Retail. Despite being given training and support,
11 Jaz Cariola's performance fell short on most counts, resulting in \$1.2 million dollar revenue
12 shortfall, for which she was issued several written and verbal warnings and then placed on a 60-
13 day performance watch in 2023.

14 30. In or about April 2022, Jon Fisher started making more demands that Plaintiff
15 JACOB provide media publicity releases for him [Jon Fisher] and his daughter Avery Fisher
16 [Volunteer youth ambassador for the Aquarium], now age 13, in exchange for making donations
17 to the BAY.org. Jon Fisher had an agenda that he wanted and insisted that Plaintiff JACOB put
18 his daughter on stage at the Commonwealth Club. He wanted her to be famous and celebrated as
19 a young ambassador who had a passion for ocean conservation.

20 31. In or about September 2022, Plaintiff learned that Director of Animal Care
21 Melissa Schouest, without Plaintiff's knowledge or authorization, unilaterally entered into a
22 contract, purportedly on behalf of Defendant BAY.org, with Disney Worldwide Services, Inc.
23 (hereinafter "Disney"), despite the fact that Schouest was not authorized by Defendant BAY.org
24 to sign contracts with third parties. The purported contract involved BAY.org providing samples
25 of shark blood to Disney for research purposes. At or about the same time Plaintiff learned of
26 this unauthorized contract, he also learned the Schouest had, in fact, sent shark blood belonging
27 to Defendant BAY.org to Disney. Plaintiff promptly began an investigation into the matter.
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1 32. The shark blood in question came from broadnose sevengill sharks (species
2 Notorynchus cepedianus), very special 7-gill sharks at the Aquarium, which is why Disney was
3 particularly interested in this research. These 7-gill sharks are precious and rare and are
4 considered more prehistoric than normal 5-gill sharks. The Aquarium is one of only two
5 aquariums with such sharks in the United States. At any given time, the Aquarium normally had
6 about a dozen 7-gill sharks.

7 33. On or about December 16, 2022, after many calls and texts with Disney, Plaintiff
8 called Disney and informed Disney that Schouest had entered into an unauthorized agreement
9 with Disney. Disney informed Plaintiff that it would therefore pause activity under the
10 unauthorized agreement “until you figure out what you want to do.” Approximately one month
11 after the call, Disney started putting pressure on Plaintiff to allow Disney to commence research
12 on the shark blood samples Schouest had provided to Disney without authorization. The
13 unauthorized agreement Schouest surreptitiously signed with Disney surrendered all the
14 Aquarium’s rights with respect to the blood and the research on the blood. This was cause for
15 immediate termination. Plaintiff never gave Disney permission.

16 34. In or about June 2023, Fisher then asked the Aquarium to support his daughter in
17 breaking the Guinness Book of World Records by performing underwater tricks in the Aquarium
18 Tanks. Plaintiff JACOB allocated staff resources, training, time and equipment to enable this feat
19 in 2023. His daughter was provided with Media Releases by BAY.org and publicity to celebrate
20 her success, which was also good PR for the Aquarium and advanced the youth ambassador
21 concept.

22 35. In or about September 2023, Avery Fisher was also invited by Plaintiff JACOB,
23 to take the stage with the UNCCD at the Dubai Opera, during the UN COP28 Climate Summit.

24 36. On or about March 15, 2023, Plaintiff JACOB was notified via email by Board
25 Member Dean A. Morehouse that the Personnel Committee together with the Board Chair met to
26 evaluate his 2022 performance and to set his 2023 compensation in accordance with the terms of
27 his employment agreement with Bay.org. Given his sixth consecutive outstanding annual
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1 performance review, Plaintiff JACOB’s base salary for 2023 was increased to \$350,000; and he
2 was awarded a discretionary bonus of \$35,000 given his outstanding performance and
3 contributions to BAY.org during 2022.

4 37. Between 2020 – 2024, Plaintiff JACOB reminded the Board approximately thirty
5 (30) times [Board meets four (4) times a year / once every quarter – plus in between times] that
6 the BAY.org has a \$1-3 million dollar (rolling) cash shortfall to meet its fiscal obligations. The
7 Board did not take the opportunity to respond to numerous reminders by Plaintiff.

8 38. In or about June 2023, controller Teppei Tokura, unable to speak or communicate
9 in English well due to his deficient command of the English language, became a growing
10 problem with external vendors who complained they could not understand what Tokura was
11 saying the majority of the time. Plaintiff JACOB offered to send Tokura to English speaking
12 lessons and communication training. Controller Teppei Tokura continued to invariably present
13 erroneous and questionable financial spreadsheets and often made confusing statements to
14 Plaintiff JACOB, Executive Assistant and Board Liaison Vicki De Witt, and to the Vice
15 President Guest Experiences Paul Nakamoto. Plaintiff was concerned that Tokura was not
16 following standard operating procedures with respect to financial controls.

17 39. In or about August 2023, Jon Fisher lobbied Plaintiff JACOB to nominate him
18 [John Fisher] as Board Chair and showed interest in paying the 1 to 3 million dollar budget
19 shortfall. Mr. Fisher directly asked Plaintiff JACOB to be the Chair. Plaintiff JACOB responded
20 with offering him a position on the board. That was not good enough for Mr. Fisher. He often
21 stated that he, Mr. Fisher, was the “new sheriff in town”. He wanted the Chairmanship and just
22 the Chairmanship, and made that very clear. He offered to give and raise significant money to
23 help the Aquarium get out of it’s debt. He also offered to help with the \$260 million
24 transformation that was Plaintiff JACOB’s vision of the future Climate Museum, i.e. the Bay
25 Ecotarium.

26 40. On or about October 2, 2023, after a yearlong investigation, Director Animal Care
27 Melissa Schouest was issued a “Performance Improvement Memo & Disciplinary Action,” by
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1 Human Resources Coordinator Jasmine Guzman and General Manager Operations Jaz Cariola,
2 for a six-month period, as an official warning for incidents that pertained to the unauthorized
3 research activities and external agreements over the last year. Specifically, amongst other
4 accusations:

5 “C. Entering into an unauthorized Agreement with Disney Worldwide Services, Inc.
6 in concert with Ms. Holst which included consenting to the transfer of Company
7 property and the potential research/outcomes thereto. This unacceptable behavior
8 included concealing the agreement for over a year till it was discovered by executive
9 management.

10 “D. Transmitting large amounts of blood [115 vials] samples to Disney and having a
11 knowledge that Disney would be transmitting analyzed [gigabytes] data and findings
12 to [University A] (identity of University intentionally omitted) based on the matters
13 noted above in ‘C’ while knowing that there was no standing agreement between
14 [University A] and the Company since the agreement with Disney was never shared,
15 consulted with or revealed to the President or CEO of the Company for over a year.”

16 41. In or about late 2023, Disney Vice President Mark Penning sent results from
17 Disney’s research on the Aquarium’s shark blood and associated data to University A but did not
18 send it to the Aquarium. BAY.org attorney Relani Belous called University A and informed it
19 that the shark blood used in the research was stolen from the Aquarium and warned University A
20 not to use it. Disney subsequently informed BAY.org that its position was that Disney owned
21 the shark blood and the research, because Schouest signed the contract and provided the shark
22 blood. Penning told Plaintiff, “as far as we are concerned, Disney owns everything.”

23 42. In or about late 2023, after a thorough investigation, Melissa Schouest was
24 warned of performance issues including failure to write and secure grants, and was given a six-
25 month period to improve her performance, which was noted in her “Performance Improvement
26 Memo & Disciplinary Action,” dated October 2, 2023. To date, no other action has been taken
27 against Melissa Schouest and she is still employed with Defendant BAY.org.
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1 43. Plaintiff JACOB notified the Board on several occasions between October 2,
2 2023, and May 22, 2024, the day of termination, about the unauthorized research activities and
3 external agreements by Melissa Schouest, including a May 19, 2023 email, which states in
4 pertinent part:

5 [Two] of the employees (Melissa and Jaz) are on a 6 month and 60 day performance
6 watch respectively, with multiple warnings, for serious mis-conduct and dereliction
7 of duty and have no credibility to make generic allegations. In Melissa’s case an
8 external attorney [Relani Belous] was hired to investigate one of the most ethical
9 misconducts in the Aquarium’s history where 115 vials of blood samples and
10 gigabytes of data were sent to Disney; and a contract was secretly signed and kept
11 concealed for over ONE year, giving up ALL our rights to research credits. Both their
12 performance reviews were to take place the coming Tuesday (which has now been
13 carefully pre-empted to protect their jobs with their letter to the Board). (Emphasis in
14 original.)

15 44. Between May 2023 and March 2024, Plaintiff JACOB communicated with the
16 Board approximately ten (10) times, via emails, that the BAY.org had a \$1-3 million dollar cash
17 shortfall to meet its fiscal obligations. These emails were dated on or about May 9, 2023, May
18 10, 2023, May 16, 2023, June 7, 2023, October 2, 2023, October 17, 2023, November 22, 2023,
19 December 13, 2023, February 17, 2024, and March 16, 2024. The Board failed to respond to
20 numerous of these ten emails.. Additionally, during this period, Plaintiff frequently notified
21 Board members verbally of the cash shortfall and the inability to meet fiscal obligations.

22 45. On or about November 27, 2023, BAY.org, content and pleased with Plaintiff
23 JACOB performance, entered a Service Addendum to the Employment Agreement dated
24 December 12, 2023, whereby BAY.org agreed to augment Plaintiff JACOB’s bonus incentive
25 structure for the period between November 1, 2023 through December 31, 2024. Controller
26 Teppei Tokura refused to pay Plaintiff the \$45,000 bonus incentive he earned under said Service
27 Addendum, and to date this amount has not been paid to Plaintiff.

1 46. On or about December 26, 2023, Plaintiff JACOB nominated Jon Fisher as Board
2 Chair at the last Board Meeting of 2023, after Jon Fisher assures Plaintiff JACOB that he would
3 help raise \$1 million dollars in the first year. Once the nomination was confirmed, Plaintiff
4 JACOB announced Jon Fisher’s appointment effective February 1, 2024, with a media release
5 and a welcome bulletin in the BAY.org’s 2024 Annual report.

6 47. On or about January 2024, Plaintiff JACOB made an assessment to terminate
7 Controller Teppei Tokura effective May 2024 due to job performance. To ensure continuity,
8 Plaintiff JACOB hired an Assistant Controller Matthew Masterman, in a support role to enable
9 gradual transition. Controller Teppei Tokura’s termination was however preempted and placed in
10 abeyance due to the complaint memo dated May 13, 2024 instigated by new Board Chair Jon
11 Fisher, jointly co-signed by Director Animal Care Melissa Schouest, Asst. Director of Animal
12 Care Kevin McElligot, Controller Teppei Tokura, Executive Asst. Vicki DeWitt, General
13 Manager Jaz Cariola, Director of Facilities Chris Low. Notably, while two complainants were on
14 performance watch, two others - Vicki DeWitt and Teppei Tokura, were to be terminated in May
15 2024. Instead Plaintiff was terminated.

16 48. On January 30, 2024, the Board gave Plaintiff JACOB his seventh consecutive
17 “Outstanding” CEO evaluation and annual salary increase.

18 49. On February 1, 2024, Jon Fisher became Board Chair.

19 50. In or about March 2024, following an American Arbitration Association
20 unsuccessful arbitration action filed by Pier 39 [plaintiff – “Pier 39”], Pier 39 as a Master Lease
21 holder for the Aquarium of the Bay, served the BAY.org with a notice to quit or pay back
22 combined rents of Pier 39 and Port of San Francisco of approximately \$1.2 million dollars.

23 51. A real estate litigation attorney Elizabeth T. Erhardt was retained on March 20,
24 2024, by Plaintiff JACOB on behalf of BAY.org, to negotiate a settlement. Said engagement
25 retainer specifically provided that BAY.org designated Plaintiff JACOB as the authorized
26 representative to be the primary person to communicate with Elizabeth T. Erhardt regarding the
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1 subject matter under the retainer agreement. This designation is intended to establish a clear line
2 of authority and to minimize potential uncertainty and ambiguity of directives.

3 52. Board Chair Jon Fisher started communicating directly with Elizabeth Erhardt,
4 not just about the Lease and Realty matters but about planning an ouster of Plaintiff JACOB –
5 the very person who signed and retained the Attorney and the very person who nominated Jon
6 Fisher as Board Chair barely three months earlier.

7 53. Despite Plaintiff JACOB’s vehement objections not to settle with Pier 39 due to
8 very difficult payment terms and Pier 39’s refusal to accept terms and language regarding animal
9 endangerment; and Port of San Francisco's forgiveness of arrears to approximately 196 other
10 tenants / vendors during Covid shutdown, Elizabeth T. Erhardt ignored Plaintiff JACOB and
11 negotiated terms to settle without terms related to animal endangerment. Elizabeth T. Erhardt
12 informed Plaintiff JACOB that “Bay.org's ass was in the sling” and this matter needed to be
13 settled. To Plaintiff, it was as if Attorney Erhardt was advocating on behalf of Pier 39 rather
14 than her actual client, Defendant BAY.org. Jon Fisher continued to engage with Elizabeth
15 Erhardt without involving Plaintiff JACOB and these conversations remain undisclosed, despite
16 Plaintiff JACOB's direct objections to Elizabeth Erhardt in this regard. Thus, Attorney Elizabeth
17 T. Erhardt and Jon Fisher forced Plaintiff JACOB to accept a settlement solution regarding rent
18 which would put immense fiscal burden on BAY.org, causing the BAY.org to default on its
19 403(b) [Tax Sheltered Annuity Plan] payments/payroll, and endanger the animals in the
20 Aquarium collection.

21 54. After the settlement, attorney Elizabeth T. Erhardt continued to work behind
22 Plaintiff JACOB’s back with Jon Fisher while Plaintiff JACOB was the BAY.org authorized
23 designee. Soon thereafter, Attorney Elizabeth T. Erhardt and Jon Fisher planned and schemed to
24 oust Plaintiff JACOB. Jon Fisher issued a Memo to the Board (again, with no information to
25 Plaintiff JACOB, who is a bona fide Board Member) stating that Elizabeth Erhardt will work
26 directly with Jon Fisher (in prepping for Plaintiff JACOB's ouster from Bay.Org). Both Jon
27 Fisher and Elizabeth Erhardt keep Plaintiff JACOB in the dark.
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1 55. In or about the first half of 2024, after Jon Fisher became Board Chair, Jon Fisher
2 asked Plaintiff about the status of a \$10,000 donation from Board member Shailesh Shukla, who
3 was the only person at Bay.org of Indian national origin other than Plaintiff. After learning that
4 Shukla had not yet made his donation, Jon Fisher angrily made a racist statement to Plaintiff,
5 exclaiming “I keep my promises, unlike some people from India!” Plaintiff was stunned and
6 appalled at Fisher’s racist statement. Despite Shukla later making the donation, Fisher targeted
7 Shailesh Shukla and forced him off the Board.

8 56. In or about May 13, 2024, six staff members (as stated in 33.) sent a letter to the
9 Board expressing concerns with institutional executive leadership without citing any specifics.
10 Four of the six staff members, Director Animal Care Melissa Schouest; General Manager Jaz
11 Cariola; Controller Teppei Tokura, and Vicki De Witt were to be terminated effective May 22,
12 2024.

13 57. On or about May 14, 2024, unbeknownst to Plaintiff JACOB, attorney Elizabeth
14 T. Erhardt presented herself at a Board meeting called by Jon Fisher and discussed Plaintiff’s
15 termination. Attorney Elizabeth T. Erhardt and Jon Fisher jointly vigorously and zealously
16 advocated for Plaintiff JACOB’s termination of employment. As a bona fide ex-officio Board
17 member, Plaintiff JACOB was neither informed of the Board meeting nor invited. No agenda
18 was circulated, posted, or noticed in violation of the Ralph M. Brown Act of 1953 [Gov’t Code
19 section 54950, et seq.].

20 58. On or about May 14, 2024, outside attorney Jennifer Shaw was hired by the Board
21 to perform Due Process formal interviews.

22 59. Plaintiff JACOB provided Jennifer Shaw and the Board a full context of
23 developments via two emails, both dated May 19, 2024, and a proposed plan. Plaintiff JACOB
24 also included active negotiations with the City of Gilroy to add a second revenue source to wipe
25 out and extinguish \$2-3 million dollar operational shortfall.

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1 60. In the second May 19, 2024 email, entitled “AOTB OPERATIONS/WAY
2 FORWARD,” Plaintiff blew the whistle on serious misconduct and violations of policy, stating,
3 among other things:

4 • I have received a note from Jennifer Shaw with regard to a co-signed letter
5 from a handful of staff members (they do not reflect the views of majority of the staff,
6 many of whom have signed a joint counter petition in full support).

7 • The organization employee handbook has an internal communication protocol
8 and an open door policy to address any and all issues, without resorting to writing to
9 the board. Prima facie it appears to have been instigated with a hidden agenda to smear
10 and slander.

11 • 2 of the employees (Melissa and Jaz) are on a 6 month and 60 day performance
12 watch respectively, with multiple warnings, for serious mis-conduct and dereliction
13 of duty and have no credibility to make generic allegations. In Melissa’s case an
14 external attorney was hired to investigate one of the most ethical misconducts in the
15 Aquarium’s history where 115 vials of blood samples and gigabytes of data were sent
16 to Disney; and a contract was secretly signed and kept concealed for over ONE year,
17 giving up ALL our rights to research credits. Both their performance reviews were to
18 take place the coming Tuesday (which has now been carefully pre-empted to protect
19 their jobs with their letter to the Board). [Emphasis in original.]

20 In the same email, Plaintiff JACOB also laid out his vision for the way forward for the
21 organization and enumerated several his achievements, stating:

22 • Not only have I raised the brand, profile, position and presence of the
23 Aquarium, under my leadership it has received the California Governor’s first
24 Environmental Sustainability Award, Cal Travel Sustainability Award SEAL
25 Environmental Prize, multiple Global Innovation Awards and an incredible amount
26 of coverage on CBS, NBC, Fox, CNN, ABC, Al Jazeera, Al Arabiya, WION TV, and
27 a very large number of global magazines and Newspapers.
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- My participation and Key-Note speaking engagements, have brought our Ecotarium to larger audiences, yielding in additional \$870,000 in revenue opportunities to design and masterplan oceanariums and environmental initiatives in Jamaica, Norway, India, Scotland, NJ, Botswana, Greece, Galapagos. A single Oceanarium project in Odisha could fetch a Master planning/ Design fee of \$3.2 million.

- With accreditations and affiliations secured from the Smithsonian, AZA, UNFCCC, UNCCD and 100 endorsements ranging from NASA, National Geographic, Stanford, Berkeley to UCSF, we have covered an incredible journey for a small institution bringing some very high profile individuals to engage with our vision for the Ecotarium including- Dr. Jill Biden, Lt. Gov. Kounalakis, Gov. Gavin Newsom, Gov. Jerry Brown, Secretary John Kerry, Steve Jurvetson, Crown Prince Haakon of Norway, former Prime Minister of Greece, Marc Benioff, former President of Costa Rica, former President of Kiribati Anote Tong, Sir Richard Branson, Dr. Andrew Steer, President of Jeff Bezos fund, Ray Dalio, former First Minister of Scotland and most recently NASA Astronaut Charlie Duke, to name a few. This level of networking requires time and consistent effort to build a base for our future. There are not many Aquarium CEOs who would work at this depth, breadth and pace of scale accomplishing success on so many fronts with a sense of drive, dedication and purpose.

61. Plaintiff JACOB also provided Jennifer Shaw with a copy of the “Performance Improvement Memo & Disciplinary Action,” dated October 2, 2023, issued to Director Animal Care Melissa Schouest regarding her unauthorized business relationship with Disney, and her collusion with Jon Fisher, referenced above. These efforts by Plaintiff JACOB were simply ignored.

62. On or about May 18, 2024 and May 22, 2024, Jon Fisher and attorney Elizabeth T. Erhardt (still on retainer signed by Plaintiff JACOB for Defendant Bay.org) call for another

1 closed Board meeting, again without inviting Plaintiff JACOB or giving him an opportunity to
2 refute or defend himself against the Board's decision to summarily terminate him without cause
3 or due process. Jennifer Shaw then telephonically called Plaintiff JACOB at approximately 3:00
4 PM on May 22, 2024, without explaining or revealing the basis for his termination, informed
5 Plaintiff JACOB that he could either resign or be terminated and that the Board wanted his
6 decision while on the phone. Plaintiff JACOB requested his due process, and both ignored his
7 request. Within two hours of the Board's vote [Jon Fisher, Angelique Tompkins, Kay Carney, JJ
8 Hanley in favor of termination; Jacquelyn Miller and Shailesh Shukla, against termination.
9 (Shailesh Shukla, another person of Indian descent, was terminated by Joh Fisher.)].

10 63. Within hours following Plaintiff's termination, Jon Fisher, Controller Teppei
11 Tokura, and Vicki De Witt were quoted in the media alleging that Plaintiff JACOB was
12 terminated for gross financial mismanagement; and they actively provided detailed prepared
13 spreadsheets to various media outlets in support of his termination.

14 64. On or about May 20, 2024, Plaintiff JACOB and the BAY.org also decided to
15 terminate General Manager Jaz Cariola following a 60-day performance warning due to findings
16 of egregious misconduct and dereliction of duty; using other staff as scapegoats instead of taking
17 ownership of blame; not being accountable for her own actions; not generating the grants and
18 letters of intent, failure to communicate, supervise her staff, handle retail, facilities, animal care
19 oversight as well as failure to follow-up on AZA reporting standards for accreditation, jointly
20 with Vicki De Witt (she specifically did not respond to AZA (Association of Zoos and
21 Aquariums) ..when they had missed the deadline by 30 days) missed submission deadlines et al,
22 following multiple written and verbal warnings. Plaintiff JACOB and the BAY.org likewise
23 decided to terminate Executive Assistant to the President and CEO and Board Liaison Vicki De
24 Witt due to unauthorized financial activities as well as misrepresenting her position title. This
25 was the same week other terminations were scheduled for Controller Teppei Tokura and Animal
26 Care Director Melissa Schouest following a six month warning. However, all terminations were
27 placed in abeyance given the complaint memo dated May 13, 2024 (instigated by new Board
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1 Chair Jon fisher) signed by Melissa Schouest, Kevin McElligot, Chris Low, Patrick Doran, Vicki
2 DeWitt, and Jaz Cariola, as damage control to thwart the impending terminations.

3 65. On May 22, 2024, Plaintiff JACOB was terminated. On May 23, 2024, he was
4 sent a separation form signed by Vicki DeWitt and Human Resources Coordinator Jasmine
5 Guzman. The separation form states that he was terminated May 22, 2023; however, the
6 document also states that it was “a voluntary resignation.” This document was never signed by
7 Plaintiff JACOB. The document also states that there was no exit interview conducted. The
8 document also states that company property had not been returned yet. The document also states
9 that vacation pay accrued in the amount of \$19,110.

10 66. On or about May 28, 2024, following Plaintiff JACOB’s termination of
11 employment and the defamatory sensationalized news media coverage surrounding his
12 separation, Angelina Christine, former Associate Director of Sales and Events / Former Director
13 of EcoXpeditions for Bay.org and direct report to Plaintiff JACOB, vehemently criticized the
14 Board for taking adverse action against Plaintiff JACOB. Angelina Christine
15 emphasized/stressed Plaintiff JACOB hard work and achievements during his seven year stint to
16 rebrand the Aquarium of the Bay, giving it a complete makeover, and adding 24 new exhibits
17 with literally no budget. Angelina Christine further stated that Plaintiff JACOB inherited a \$6
18 million dollar debt when he took over and had to make tough decisions to streamline the
19 organization. She added how thoughtless it is to ignore that Plaintiff JACOB earned the
20 BAY.org \$70 million dollars in revenues and brought \$12 million dollars in savings over the
21 years and hat every annual report documents an amazing array of programs and activities that
22 Plaintiff JACOB never got thanked for, stating:

23 How thoughtless it is to ignore that he earned us \$70 million in revenues and brought
24 \$12 million in savings over the years. Every annual report documents an amazing
25 array of programs and activities that he never got thanked for.

26 67. Angelina Christine named individuals Vicki De Witt and Teppei Tokura that
27 mismanaged funds and blamed Plaintiff JACOB. Angelina Christine expressed her
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1 disappointment that the public media one-sided response by the BAY.org hurt the organization's
2 reputation that Plaintiff JACOB built with care and integrity. Angelina Christine, as had many
3 others, questioned the motives of Jon Fisher and his self-promotion, stating:

4 Going public with one sided stories has only hurt the organization's reputation that
5 [Jacob] built with such care and integrity. [Jacob] has massive community support
6 throughout the world, and many question the motives of Jon Fisher and his self
7 promotion.

8 68. Plaintiff JACOB believes that he was denied his Due Process that is afforded to
9 staff regardless of title per the BAY.org's employee handbook; and was summarily terminated
10 with haste and without cause.

11 69. As recent as the late May and early June 2024, Jon Fisher called an all staff
12 meeting (e.g., approximately 80 full time and part time employees) whereby Jon Fisher
13 continued his campaign and scheme to smear, insult, denigrate, and slander Plaintiff JACOB.

14 70. Board Chair Jon Fisher; Director Animal Care Melissa Schouest; General
15 Manager Jaz Cariola; Controller Teppei Tokura, and Executive Assistant Vicki De Witt, have
16 recklessly harmed the reputation and character of Plaintiff JACOB who generated the visionary
17 transformation of the Aquarium into the world's first comprehensive climate museum in
18 resonance with California's green policies toward climate sustainability vital to humanity.
19 Plaintiff JACOB has significantly raised the brand, profile, position, and presence of the
20 BAY.org. Plaintiff JACOB has been recognized with honors and accolades from around the
21 world and has been the recipient of, including without limitation, the California Environment
22 Secretary's First Environmental Sustainability Award; 2019 Louie Kamookak Medal by the
23 Royal Canadian Geographical Society; Cal Travel Sustainability Award; multiple Global
24 Innovation Awards; SEAL Environmental Prize; Late Queen Elizabeth II Platinum Jubilee
25 Medal; Elected unanimously on the Board of Directors of International Council of Museums-
26 USA; United States Travel Association; secured the Smithsonian Affiliation Status, first 2 AZA
27 Accreditations and the commendable twin accreditations from 2 United Nations agencies-

1 UNCCD, UNFCCC- a rare recognition for any Aquarium. Plaintiff JACOB was the President
2 and CEO of the largest conservation non-profit group in the San Francisco Bay area, leading the
3 Smithsonian affiliated Aquarium of the Bay and seven institutions with ongoing projects in
4 Norway, Jamaica, Galapagos, New Jersey and elsewhere. In 2018, Plaintiff JACOB unveiled the
5 vision for a \$260 million dollar transformation [sustainable immersive ecotarium] of the
6 Aquarium into the world's first climate and ocean conservation living museum. As of 2019,
7 Plaintiff JACOB had been involved in over 100 museums and exhibits and has been the founding
8 President & CEO of four stellar institutions. Plaintiff JACOB is one of the 3-4 minorities
9 serving as President and CEO of the 236 accredited aquariums in the United States.

10 71. Plaintiff JACOB has indeed suffered consternation, anxiety, depression, loss of
11 self-esteem and motivation, lack of confidence, crying spells, frustration, mental anguish,
12 isolation, introvert, all due to the trauma he sustained.

13 **FIRST CAUSE OF ACTION**

14 **RACE / NATIONAL ORIGIN DISCRIMINATION IN EMPLOYMENT- WRONGFUL**
15 **DISCHARGE - FEHA**

16 72. Plaintiff realleges and incorporates by reference paragraphs 1-71, inclusive, as
17 though fully set forth herein.

18 73. Jurisdiction in this Court is invoked pursuant to the California Fair Employment
19 and Housing Act [FEHA], i.e., Cal. Gov. Code §§ 12900, 12921, 12926, 12940 and 12965.

20 74. Plaintiff JACOB belongs to the protected class as he is of Indian national origin
21 and of the Indian race.

22 75. The Board of Directors of Defendant Bay.org, including but not limited to Jon
23 Fisher, is prejudiced against members of the protected class.

24 76. Defendant terminated Plaintiff's employment without good and sufficient cause
25 on account of Plaintiff's membership in the protected class. Defendant also forced off the
26 Board the only other person of Indian national origin, Shailesh Shukla.

27 77. As a result of the aforesaid discrimination, Plaintiff has suffered and continues to
28 suffer a loss of wages/salary, benefits and other employee compensation in an amount which is

1 currently unascertained. Plaintiff faces substantial diminution of his future earning capacity in
2 an amount which is also currently unascertained. Plaintiff will request leave of the Court to
3 amend this Complaint to state the amount of damages when they have been ascertained or upon
4 proof at the time of trial.

5 78. As a result of the aforesaid discrimination, Plaintiff has been held up to great
6 derision and embarrassment with fellow workers, friends, members of the community, and
7 family, and continues to suffer emotional distress because Defendant demonstrated to Plaintiff
8 that it would not recognize nor accept him as an employee solely because of his national origin
9 and race. The Board of Directors of Defendant, including but not limited to Jon Fisher, knew
10 and/or should have known that its conduct was likely to result in additional, severe mental and
11 emotional distress to Plaintiff. Plaintiff therefore seeks damages for such emotional distress in
12 an amount to be proven at time of trial.

13 79. In doing the acts set forth above, Entity Defendant acted as herein alleged with a
14 conscious disregard of Plaintiff's rights to employment notwithstanding his national origin or
15 race. Entity Defendant, in utter disregard of its obligation under the law, acted with the
16 malicious intention of removing Plaintiff from the workplace because of his membership
17 within the relevant protected class. In addition, said Entity Defendant, its officers and
18 managing agents have knowingly retained, coddled and protected various employees known to
19 be hostile toward members of the protected class and/or known by the management of said
20 Entity Defendant to disregard the laws prohibiting discrimination in employment. The officers
21 and managing agents of Defendant Entity made a conscious decision that they would not
22 comply with the law of this State. This conduct by Defendant was, and is, despicable, cruel
23 and oppressive. The Plaintiff is therefore entitled to an award of punitive damages in an
24 amount to be proven at trial.

25 80. In bringing this action, Plaintiff has been required to retain the services of
26 counsel. Pursuant to California Government Code § 12965(b), they are entitled to and hereby
27 request an award of attorney and expert witness fees and costs of suit.
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SECOND CAUSE OF ACTION
**RETALIATION IN VIOLATION OF PUBLIC POLICY REGARDING ENGAGING IN
PROTECTED ACTIVITY FOR REPORTING UNFAIR EMPLOYMENT PRACTICES
(Whistleblowing)**

81. Plaintiff realleges and incorporates by reference paragraphs 1-71, inclusive, as though fully set forth herein.

82. This is an action at law to recover damages for violation of statutes and unlawful employment practices. Plaintiff alleges that he is a person protected by California laws, which protect CEOs and Presidents, fiduciaries, of non-profit organization from retaliation for exercising their fundamental rights to protect the non-profit organization from fraud, nefarious illegal conduct, egregious misconduct and dereliction of duties, conflicts of interest, etc. [see ¶¶ 26, 32, 33, 35, 36, and 37]. Jurisdiction in this court is invoked pursuant to, including, but without limitation, California Labor Code § 1102.5; California Constitution Article I, § 8; *Rojo v. Kliger* (1990) 52 Cal.3d 65; *Foley v. Interactive Data Corp.* (1988) 2 Cal.3d 654; *Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083; *Tameny v. Atlantic Richfield* (1980) 27 Cal.3d. 167; *Hentzel v. Singer Co.* (1982) 138 Cal.App.3d 290; and *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028.

83. As a proximate result of being targeted for blowing the whistle, Plaintiff was terminated and/or subjected to adverse action [constructive discharge].

84. As a proximate result of said retaliation, and violations of public policy by BAY.org, Plaintiff was held to ridicule, all because of his right to exercise his fundamental rights protected by the Labor Code and other legal authority in connection with the right to report fraud, nefarious illegal conduct, egregious misconduct and dereliction of duties, conflicts of interest, etc. [see ¶¶ 26, 32, 33, 35, 36, and 37]. Plaintiff alleges that he was denied the opportunity to be treated equally and fairly and employed by BAY.org in the position he held, without retaliation or reprisal.

85. Plaintiff was further held up to great ridicule and embarrassment with fellow workers, colleagues in the industry, friends, members of the community and family, and suffered emotional distress because Defendants demonstrated to Plaintiff that it would not recognize his

1 protected and fundamental right, particularly as a fiduciary to the Board, to report fraud,
2 nefarious illegal conduct, egregious misconduct and dereliction of duties, conflicts of interest,
3 etc. [see ¶¶ 26, 32, 33, 35, 36, and 37]. Defendants further acted intentionally and unreasonably
4 with the recognition that their conduct was likely to result in damages through mental distress.

5 86. Plaintiff, as a fiduciary, attempted to discuss with the Board and other officials the
6 fraud, nefarious illegal conduct, egregious misconduct and dereliction of duties, conflicts of
7 interest, etc. [see ¶¶ 26, 32, 33, 35, 36, and 37], however, said Board and officials and/or
8 administration personnel of Defendants were not responsive to his petitions. Said officials,
9 personnel management, and others, declined to censure, criticize, terminate, suspend, reverse any
10 decisions, or otherwise take any action, even after having been informed of the unlawful
11 conduct.

12 87. By reason of the wrongful acts of the Defendant as hereinabove alleged, Plaintiff
13 will or has been required to retain physicians, surgeons, psychiatrists, psychologist, and
14 healthcare providers to examine, treat and care for him and has incurred or will incur additional
15 medical expenses in an amount to be proven at the time of trial.

16 88. As a further proximate result of the conduct of Defendants, Plaintiff suffered great
17 emotional distress. Plaintiff is informed and believes and thereon alleges that said injuries are
18 not compensable under the Workers' Compensation Act and are not a risk or condition of his
19 employment. Because of the cold, callous and indifferent manner in which Plaintiff's separation
20 was carried out; the deliberate and intentional refusal to follow recognized local and state
21 statutes; and Defendants' encouraging the unlawful practices, Plaintiff became distressed and
22 upset and experienced severe emotional suffering. Plaintiff seeks damages for such mental and
23 emotional distress in a sum according to proof at time of trial.

24 89. By reason of the aforementioned acts, Plaintiff will thereby sustain loss of
25 earnings. Plaintiff will therefore request leave of the court to amend this Complaint to state the
26 amount of all such damages when they have been ascertained or upon proof at the time of trial.

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1 spending practices. When hired Plaintiff JACOB, he was granted unfettered authority and
2 discretion to operate the organization as he saw fit. Moreover, on or about March 15, 2023,
3 Plaintiff JACOB was notified by attorney Dean A. Morehouse that the Personnel Committee
4 together with the Board Chair met to evaluate his 2022 performance and to set his 2023
5 compensation. Given his outstanding performance review, Plaintiff JACOB's base salary for
6 2023 was increased to \$350,000; and awarded a discretionary bonus of \$35,000 given his
7 outstanding performance and contributions to Bay.org during 2022. Finally, Plaintiff JACOB
8 was never provided the opportunity and Due Process right to explain or defend against the false
9 accusations. As of this date, no evidence has been developed to support the accusations and
10 charges by Defendants.

11 94. Said unprivileged and false statements, comments, publications, accusations, and
12 allegation referred to above, became accessible and known to Plaintiff's fellow workers,
13 colleagues in the industry, friends, members of the community and family, because of the
14 dissemination by Defendants of the false accusations and charges and his summary termination
15 of employment.

16 95. Said published words by Defendants were not privileged because the statements
17 were maliciously made to persons who had no litigation interest in the subject of the comments
18 and it was not reasonably calculated to protect or further the common interest, because the
19 published words were false, fabricated and manufactured to justify the adverse action against
20 Plaintiff JACOB. Defendants knew that unless they made serious accusations against Plaintiff
21 JACOB concerning his professional integrity and the accusations were endorsed, supported, and
22 perpetuated by other management, and legal counsel, Defendants would not be credible in their
23 charges against Plaintiff JACOB after many years of outstanding service working for BAY.org.
24 Furthermore, said published words by Defendants were not privileged because said false
25 statements and were not motivated by any legitimate and proper motive to benefit BAY.org but
26 only motivated by purely self-serving pretextual reasons. Furthermore, Defendants' behavior
27 was not privileged because they had no reasonable belief that the accusations and statements
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1 were true and in the best interest of BAY.org but rather was motivated by the malicious intent to
2 injure Plaintiff and with a conscious disregard to Plaintiff's rights. Said words were intended,
3 when said words were published, that management employees, subordinate management
4 employees, co-workers, colleagues, professionals, peers, supervisors, friends, family, readers,
5 listeners, and witnesses, as described above, believed that Plaintiff did in fact commit the serious
6 charges and accusations of what he was accused of because Plaintiff was terminated. Said
7 published words were understood by management employees, subordinate management
8 employees, co-workers, colleagues, professionals, peers, supervisors, friends, family, readers,
9 listeners, witnesses, and the public, to mean exactly what he was accused of. Said belief and
10 understanding on the part of said readers and listeners was reasonably drawn from the rumors
11 and accusations because Plaintiff was accused and summarily terminated. Since the alleged
12 incidents, Plaintiff has experienced, including but not limited to, questioning his professional
13 integrity and reputation, veracity, and honesty.

14 96. Said publications has exposed Plaintiff to hatred, contempt, ridicule, and obloquy
15 and has caused Plaintiff to be injured in his professional occupation all to his general damages in
16 a sum according to proof at trial.

17 97. As a direct and proximate result of the aforementioned behavior of the
18 Defendants, Plaintiff has been defamed and Defendants have ruined Plaintiff's professional
19 career and reputation in his field because such industry requires integrity, character and honesty
20 which are placed in issue in this matter. By reason of the aforementioned acts, Plaintiff thereby
21 sustained loss of earnings and wages, seniority, denied merit raises and bonuses, and other pay
22 and benefits in an amount as yet unascertained and in a sum according to proof at trial. Plaintiff
23 is unable to estimate and is uncertain as to his future losses of earnings. Plaintiff will therefore
24 request leave of the court to amend this Complaint to state the amount of all such damages when
25 ascertained or upon proof at the time of trial.

26 98. By reason of the wrongful acts of the Defendant as hereinabove alleged, Plaintiff
27 will or has been required to retain physicians, surgeons, psychiatrists, psychologist, and
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1 healthcare providers to examine, treat and care for him and has incurred or will incur additional
2 medical expenses in an amount to be proven at the time of trial.

3 99. As a further proximate result of the conduct of Defendants, Plaintiff suffered great
4 emotional distress. Plaintiff is informed and believes and thereon alleges that said injuries are
5 not compensable under the Workers' Compensation Act and are not a risk or condition of his
6 employment. Because of the cold, callous and indifferent manner in which Plaintiff's separation
7 was carried out; the deliberate and intentional refusal to follow recognized local and state
8 statutes; and Defendants' encouraging the unlawful practices, Plaintiff became distressed and
9 upset and experienced severe emotional suffering. Plaintiff seeks damages for such mental and
10 emotional distress in a sum according to proof at time of trial.

11 100. By reason of the aforementioned acts, Plaintiff will thereby sustain loss of
12 earnings. Plaintiff will therefore request leave of the court to amend this Complaint to state the
13 amount of all such damages when they have been ascertained or upon proof at the time of trial.

14 101. In doing the acts set forth above, Defendants knew that the systematic campaign,
15 conspiracy and scheme to target Plaintiff for his ouster without credible findings of wrongdoing
16 was unlawful, illegal, malicious, without justification, unauthorized, unprivileged, wanton,
17 despicable, with reckless disregard, oppressive, and with a conscious disregard for Plaintiff's
18 rights motivated by pretextual reasons stated above, in violation of Plaintiff's fundamental and
19 inherent rights. Defendants acted with malice because Defendants had no reasonable belief that
20 their accusations were true but were motivated to disparage Plaintiff based on pretextual reasons.
21 Plaintiff's demand thereby warrants the assessment of punitive damages against Defendants in a
22 sum according to proof. Plaintiff will pray leave of the Court to amend this Complaint to state
23 such amounts at the time they are ascertained, or according to proof at trial.

24 **FOURTH CAUSE OF ACTION**
25 **FRAUD & DECEIT**

26 102. Plaintiff realleges and incorporates by reference paragraphs 1-8, and 10-71,
27 inclusive, as though fully set forth herein.

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1 103. This is action at law to recover damages for fraud and misrepresentation. (see
2 *Lazar v. Superior Court* (1996) 12 Cal.4th 631; *Drzewiecki v. H & R Block, Inc.* (1972) 24
3 Cal.App.3d 695; and *Rabago-Alvarez v. Dart Industries, Inc.* (1976) 55 Cal.App.3d 91).

4 104. Based on the promises and assurances by BAY.org and the Board, to wit: relocate
5 his home and move from Alberta, Canada to San Francisco, secure a Permanent Resident O-1
6 non-immigrant VISA, in exchange for a generous salary, bonuses, other benefits and perks, he
7 would have indefinite employment so long as Plaintiff JACOB received acceptable performance
8 evaluations during his tenure. Thus, based on those representations and promises, Plaintiff
9 JACOB accepted employment with BAY.org.

10 105. The representations made by BAY.org and the Board were in fact false. The true
11 facts were that, though the BAY.org was financially hemorrhaging and this was vaguely made
12 known to Plaintiff JACOB, Plaintiff JACOB had not been told that the BAY.org had filed for a
13 bankruptcy [insolvency] protection previously; and that the former CEO who left in 2015 had
14 borrowed seven million dollars from various lenders and was in default. After an exhaustive
15 Executive search for the vacant President and CEO position, six (6) months of interviews and
16 thorough vetting, Plaintiff JACOB was hired to bring significant and decisive changes to the
17 organization, raise its profile, credibility and envision its future transformation. Moreover, albeit
18 BAY.org concealed the solvency and financial health of the organization which placed a huge
19 burden and responsibility on Plaintiff JACOB to improve its condition, Plaintiff JACOB was
20 compelled and forced to spend hundreds of hours of his time beyond his regular work schedule
21 to raise funds and revenue and make drastic cuts and unpopular decisions to cut its forces.
22 Furthermore, Plaintiff JACOB received “outstanding” performance evaluations and salary
23 increases for each of the seven (7) years he was employed by BAY.org. Consequently, Plaintiff
24 JACOB had a target on his back because staff were not pleased with his drastic decisions which
25 were made in the best interest and acumen of the organization.

26 106. At the time the representations and promises were made, Plaintiff JACOB did not
27 know the true financial condition and solvency of the BAY.org were in fact false. Plaintiff
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1 JACOB learn the truth until after he began employment with the BAY.org as it was his
2 operational responsibility to keep the organization solvent and healthy.

3 107. When BAY.org made these representations and omissions, it knew them to be
4 false, and these representations were made by BAY.org with the intent to defraud, deceive, and
5 entice Plaintiff JACOB to accept employment. BAY.org, without any justification whatsoever,
6 made these representations with the intent to induce, entice, and engage Plaintiff JACOB's
7 professional, and global and preeminent expert in his field. Had Plaintiff JACOB known the true
8 facts, he would have had second thoughts and not relied upon them to accept employment.
9 Plaintiff JACOB reasonably relied on the assurances and promises to his detriment.

10 108. Plaintiff JACOB, at the time these representations were made by BAY.org, and at
11 the time, Plaintiff JACOB believed the representations, promises, and assurances as herein
12 alleged, was ignorant of the falsity of the BAY.org's representations and believed them to be
13 true. In reliance on these representations, Plaintiff JACOB relocated his home and moved from
14 Albert, Canada to San Francisco, secured a Permanent Resident O-1 non-immigrant VISA, and
15 relied to his detriment he would have indefinite employment so long as Plaintiff JACOB
16 received acceptable performance evaluations during his tenure.

17 109. As a proximate result of the intentional misrepresentation, deceit, or concealment
18 of material facts and omissions known to the BAY.org, Plaintiff JACOB was injured in his
19 profession and occupation because BAY.org will report, as it already has to the newspapers of
20 general circulation, the media outlets, and the trade profession, that Plaintiff JACOB was
21 terminated for gross financial mismanagement as detailed by the spreadsheets provided to
22 various media outlets in support of his termination.

23 110. As a result of the aforesaid acts of BAY.org, Plaintiff JACOB is compelled to
24 seek and find employment in his field at a loss of earnings currently unascertained. Plaintiff
25 JACOB will therefore request leave to amend this Complaint to state the amount of all such
26 damages when they have been ascertained, or upon proof at the time of trial.

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1 111. In doing the acts set forth above, BAY.org knew that the conduct was despicable
2 and cruel in conscious disregard of Plaintiff JACOB's rights to be free from fraud, deception and
3 misrepresentations. Plaintiff JACOB's demand thereby warrants the assessment of punitive
4 damages in a sum according to proof. Plaintiff JACOB will seek leave to amend this Cross-
5 Claim to state such amounts at the time they are ascertained, or according to proof at trial.

6
7 **FIFTH CAUSE OF ACTION**
8 **BREACH OF WRITTEN EMPLOYMENT CONTRACT**

9 112. Plaintiff realleges and incorporates by reference paragraphs 1-8, and 10-71,
10 inclusive, as though fully set forth herein.

11 113. This is action at law to recover damages for breach of written contract.

12 114. Based on the promises and assurances by BAY.org that Plaintiff JACOB would be
13 gainfully employed indefinitely so long as Plaintiff JACOB received acceptable performance
14 evaluations during his tenure, Plaintiff JACOB accepted employment with BAY.org. In fact,
15 Plaintiff JACOB received "Outstanding" performance evaluations and salary increases for each
16 of the seven (7) years he was employed by BAY.org.

17 115. Notwithstanding the fact that Plaintiff JACOB has performed his part of the
18 bargain and agreement, and BAY.org has received the benefit of the bargain, BAY.org has
19 reneged and breached the agreement to continue his employment indefinitely and receive timely
20 incentive bonuses.

21 **SIXTH CAUSE OF ACTION**
22 **BREACH OF THE IMPLIED-IN-FACT CONTRACT OF EMPLOYMENT**

23 116. Plaintiff realleges and incorporates by reference paragraphs 1-8, and 10-71,
24 inclusive, as though fully set forth herein.

25 117. During the entire course of Plaintiff's employment with BAY.org there existed an
26 implied-in-fact employment contract between Plaintiff and BAY.org, which were based on and
27 include, but not limited to, the following terms and conditions:

28 a) After being recruited by Mark Oppenheimer & Associates, an executive search firm
in San Francisco specifically retained by BAY.org, and asked to be the next President / CEO for

1 the BAY.org in San Francisco, Plaintiff JACOB relocated his home and moved from Albert,
2 Canada to San Francisco, secured a Permanent Resident O-1 non-immigrant VISA, and relied to
3 his detriment he would have indefinite employment so long as Plaintiff JACOB received acceptable
4 performance evaluations during his tenure. Accordingly, based on the written employment
5 agreement and his detrimental reliance that he would be joining BAY.org on a long-term basis,
6 Plaintiff JACOB accepted BAY.org’s offer of employment; and reasonably intended and expected
7 continued long-term employment supported by the countless promises and representations made to
8 him that he had a future with BAY.org. Plaintiff further expected to retire from BAY.org based on
9 his age (currently 59); the fact that this small industry domestically and globally – particularly for
10 CEO positions; the representations by Plaintiff that he expected and intended to retire from BAY.org.

11 b) Plaintiff performed competently, efficiently, and professionally. Plaintiff’s
12 performance is supported by the seven consecutive “Outstanding” CEO evaluations and annual salary
13 increases, the numerous accolades and awards received from the industry, and incentive bonuses
14 earned and received; and the repeated assurances of lifetime continued employment.

15 c) Defendant, BAY.org employed certain written policies, practices, assurances, and
16 other statements, that Plaintiff had a contract of employment for an indefinite term so long as she
17 performed and carried out his duties in a proper and competent manner. Moreover, Plaintiff neither
18 agreed nor acknowledged that he was an “at-will” employee subject to summary termination with
19 or without cause or Due Process.

20 d) BAY.org would not evaluate Plaintiff’s performance in an arbitrary, unfair, or
21 capricious manner.

22 e) BAY.org would not summarily terminate Plaintiff unless based on serious misconduct
23 and after a good faith reasonable investigation.

24 f) BAY.org would, not unilaterally and materially change terms and conditions and
25 benefits of Plaintiff’s employment without applying the same standards and rules to other employees.

26 g) That Plaintiff would not be summarily discharged, or otherwise disciplined other than
27 for good cause without notice, warnings, counseling, progressive discipline, or due process.
28

1 h) If grievances or complaints were lodged regarding Plaintiff's performance, he would
2 be entitled to adequate notice and a meaningful opportunity to respond and/or improve, and a
3 thorough investigation.

4 118. Plaintiff alleges that the Defendant, BAY.org breached the implied-in-fact
5 contract because BAY.org sought to terminate Plaintiff without any relation to his performance
6 or allegations of misconduct. Plaintiff had an expectation of continued employment with
7 termination only for good cause proven based upon the causes identified in the policies and not
8 on pretextual excuses.

9 119. Plaintiff further alleges that Defendant, BAY.org was required by the implied-in-
10 fact employment contract to refrain from violating written promises and representations it had
11 made to Plaintiff and its employees consisting of its own regulations and the assurances stated
12 herein. The above said acts of BAY.org constituted a breach of the implied-in-fact employment
13 contract in that Plaintiff was summarily terminated from his employment with the BAY.org
14 based on pretextual excuses in that the BAY.org was motivated to take adverse action against
15 Plaintiff because of his whistleblowing efforts alleged above.

16 120. By reason of the aforementioned acts, Plaintiff was prevented from attending to
17 his usual occupation for a period in the future, which amount is not readily ascertainable and will
18 thereby sustain further loss of earnings and benefits. Plaintiff further maintains that he will have
19 difficulty finding comparable employment in his field and industry due to his blemished record
20 that he was terminated. Plaintiff will therefore request leave of the court to amend this
21 Complaint to state the amount of all such damages when they have been ascertained or upon
22 proof at the time of trial.

23 **SEVENTH CAUSE OF ACTION**
24 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

25 121. Plaintiff reallege and incorporate by reference paragraphs 1-71, inclusive, the
26 First, and Fifth Causes of Action, as though fully set forth herein.

27 122. Defendants, BAY.org, and DOES 1-10, inclusive, engaged in conduct, as set forth
28 in the First, and Fifth Causes of Action, based on the theory of respondeat superior, which

1 constitutes outrageous conduct. The conduct was outrageous because the Defendants violated
2 Plaintiff' Civil Rights to be free from retaliation, and defamation. Defendant, BAY.org's
3 conduct constitutes outrageous conduct because BAY.org's pretext to terminate Plaintiff based
4 on false accusation is despicable and malicious. The acts of the Defendant, BAY.org, were done
5 with the intention to cause, or with reckless disregard of the probability of causing, serious
6 emotional distress to the Plaintiff and, as a direct and proximate result of the aforementioned
7 behavior of the Defendant, Plaintiff suffered consternation, anxiety, depression, loss of self-
8 esteem and motivation, lack of confidence, crying spells, frustration, mental anguish, isolation,
9 introvert, all due to the trauma he sustained. Those acts of which were done with reckless
10 disregard and the probability of causing severe emotional distress, was a substantial factor in
11 causing damage and injury to Plaintiff as set forth above.

12 123. By reason of the wrongful acts of the Defendant as hereinabove alleged, Plaintiff
13 will or has been required to retain physicians, surgeons, psychiatrists, psychologist, and
14 healthcare providers to examine, treat and care for him and has incurred or will incur additional
15 medical expenses in an amount to be proven at the time of trial.

16 124. As a further proximate result of the conduct of Defendants, Plaintiff suffered great
17 emotional distress. Plaintiff is informed and believes and thereon alleges that said injuries are
18 not compensable under the Workers' Compensation Act and are not a risk or condition of his
19 employment. Because of the cold, callous and indifferent manner in which Plaintiff's separation
20 was carried out; the deliberate and intentional refusal to follow recognized local and state
21 statutes; and Defendants' encouraging the unlawful practices, Plaintiff became distressed and
22 upset and experienced severe emotional suffering. Plaintiff seeks damages for such mental and
23 emotional distress in a sum according to proof at time of trial.

24 125. By reason of the aforementioned acts, Plaintiff will thereby sustain loss of
25 earnings. Plaintiff will therefore request leave of the court to amend this Complaint to state the
26 amount of all such damages when they have been ascertained or upon proof at the time of trial.
27 In doing the acts set forth above, Defendants knew that the systematic campaign, conspiracy and
28

1 scheme to target Plaintiff for his ouster without credible findings of wrongdoing was unlawful,
2 illegal, malicious, without justification, unauthorized, unprivileged, wanton, despicable, with
3 reckless disregard, oppressive, and with a conscious disregard for Plaintiff's rights motivated by
4 pretextual reasons stated above, in violation of Plaintiff's fundamental and inherent rights.
5 Defendants acted with malice because Defendants had no reasonable belief that their accusations
6 were true but were motivated to disparage Plaintiff based on pretextual reasons. Plaintiff's
7 demand thereby warrants the assessment of punitive damages against Defendants in a sum
8 according to proof. Plaintiff will pray leave of the Court to amend this Complaint to state such
9 amounts at the time they are ascertained, or according to proof at trial.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, DR. GEORGE JACOB, prays for judgment against the
12 Defendants as follows:

13 **AS TO THE FIRST CAUSE OF ACTION:**

- 14 1. For general damages in a sum according to proof;
- 15 2. For special damages in a sum according to proof;
- 16 3. For reasonable attorney fees; and
- 17 4. For punitive and exemplary damages in a sum according to proof.

18 **AS TO THE SECOND CAUSE OF ACTION:**

- 19 1. For general damages in a sum according to proof;
- 20 2. For special damages in a sum according to proof;
- 21 3. For a penalty of \$10,000 pursuant to Labor Code 1102.5 (f) (1);
- 22 4. For reasonable attorney fees pursuant to Labor Code section 1102.5 (j); and
- 23 5. For punitive and exemplary damages in a sum according to proof.

24 **AS TO THE THIRD CAUSE OF ACTION:**

- 25 1. For general damages in a sum according to proof;
- 26 2. For special damages in a sum according to proof; and
- 27 3. For punitive and exemplary damages in a sum according to proof.

1 **AS TO THE FOURTH CAUSE OF ACTION:**

- 2 1. For general damages in a sum according to proof;
3 2. For special damages in a sum according to proof; and
4 3. For punitive and exemplary damages in a sum according to proof.

5 **AS TO THE FIFTH CAUSE OF ACTION:**

- 6 1. For general damages in a sum according to proof.

7 **AS TO THE SIXTH CAUSE OF ACTION:**

- 8 1. For general damages in a sum according to proof.

9 **AS TO THE SEVENTH CAUSE OF ACTION:**

- 10 1. For general damages in a sum according to proof;
11 2. For special damages in a sum according to proof; and
12 3. For punitive and exemplary damages in a sum according to proof.

13 **AS TO ALL CAUSES OF ACTION:**

- 14 1. For cost of suit herein incurred
15 2. For such other and further relief as the Court may deem just and proper; and
16 3. Plaintiff hereby demand a jury trial on all issues and causes of action in the above

17 entitled action.

18 DATED: October 18, 2024

**LAW OFFICES OF JOSEPH L. ALIOTO
AND ANGELA ALIOTO**

20 

21 Angela M. Alioto, Esq.
22 Steven L. Robinson, Esq.
23 Angela Mia Veronese
24 Attorneys for Plaintiff,
25 DR. GEORGE JACOB