

1 Charles E. Moore (SBN 180211)
Attorney at Law
5205 Kearny Villa Way, Suite 105
2 San Diego, California 92123
Tel.: 619.838.9696

3 Rory K. Pendergast (SBN 266765)
4 THE PENDERGAST LAW FIRM, PC
555 West Beech Street, Suite 510
5 San Diego, California 92101
Tel.: 619.344.8699
6 Fax: 619.344.8701

7 Attorneys for Plaintiffs Rebecca Rauber

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

10 **REBECCA RAUBER,**

11 Plaintiff,

12 v.

13 **AMERICAN CIVIL LIBERTIES UNION**
14 **FOUNDATION OF SAN DIEGO &**
15 **IMPERIAL COUNTIES, INC., a California**
corporation; and **DOES 1 through 10,**
inclusive

16 Defendants.

CASE NO.: 37-2017-00008664-CU-W/T-CTL

COMPLAINT FOR DAMAGES

1. **Age Discrimination in Violation of the Fair Employment and Housing Act (FEHA);**
2. **Gender Discrimination in Violation of the FEHA;**
3. **Retaliation in Violation of the FEHA;**
4. **Wrongful Termination in Violation of Public Policy;**
5. **Hostile Work Environment in Violation of the FEHA;**
6. **Failure to Prevent in Violation of the FEHA;**
7. **Violation of Whistleblower Statue [Cal. Labor Code §1102.5]; and**
8. **Labor Code § 2699 PAGA Claims.**

22 Plaintiff Rebecca Rauber alleges:

- 23 1. Rauber is an adult residing in San Diego County.
- 24 2. Defendant, American Civil Liberties Union Foundation of San Diego & Imperial
25 Counties (“the ACLU”), is an organization of unknown form with its principal place of business in
26 San Diego County and, upon information and belief, is affiliated with the American Civil Liberties
27 Union. The ACLU’s mission is to fight for individual rights and fundamental freedoms for all
28 through education, litigation, and policy advocacy.

1 3. The true names and capacities of defendants, Does 1 through 10, are unknown.
2 Rauber will amend this complaint to identify these fictitious defendants when their identities are
3 discovered. Rauber is informed and believes that each of the fictitious defendants has participated
4 in the wrongful acts alleged in this complaint. Rauber is informed and believes that all defendants
5 were the other defendants' agent or employee, and acted within this agency or employment when
6 committing the wrongful acts alleged in this complaint, or otherwise ratified those wrongful acts.

7 4. Plaintiff (58 years old) worked for the ACLU for just over 10 years. She was hired
8 on May 1, 2006 as the director of communications for the organization, a senior management
9 position. Despite the ACLU's subsequent efforts to tarnish Plaintiff's record, she exceeded job
10 requirements, and received high marks for her performance. Plaintiff's work product and other
11 professional criteria are stellar and always have been.

12 5. The ACLU's executive director, Norma Chavez-Peterson, and deputy director,
13 Jeffrey Wergeles, began treating Plaintiff differently than they treated men, co-workers, and senior
14 staff who are younger. For example, in February 2015, an incident arose between Chavez-
15 Peterson and Plaintiff, which was mediated by Phyllis Quan, at Chavez Peterson's request. Ms.
16 Quan concluded Complainant did nothing wrong. According to Chavez-Peterson, one of her
17 complaints was that Plaintiff said "yes" to too many tasks and she needed to "prioritize," even
18 though Plaintiff timely completed her work. Chavez-Peterson made these comments because of
19 Plaintiff's age. The complaints were unfounded because Plaintiff timely completed her work and
20 her work-product was excellent. Management also complained that Plaintiff "coddled" younger
employees too much, which is code word for "grandma" or "old."

21 6. In April 2016, Chavez-Peterson blindsided Plaintiff by sending an email to her and
22 a colleague indicating that Plaintiff was not performing her job properly. This unfounded email
23 humiliated Complainant. In early May 2016, Plaintiff and a co-worker (another woman in her 50s)
24 sent a press release about a settlement of a case. Chavez-Peterson and Wergeles claimed to be
25 upset about the protocol for this release and met with Plaintiff and a co-worker for a hastily put
26 together closed door meeting, during which - for close to an hour - Chavez-Peterson and Wergeles
27 yelled at the two women.

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1 7. In May 2014 Wergeles and Plaintiff met at Wergeles’s request. Plaintiff
2 complained to Wergeles that the ACLU had treated her differently than other staff because of her
3 age and because she is a woman. From May 2016, Plaintiff attended bi-weekly meetings with
4 Chavez-Peterson and Wergeles (unless Chavez-Peterson cancelled the meeting). Plaintiff thought
5 all the issues were resolved, with the exception of having been demoted with respect to a big case
6 the ACLU was about to file. Plaintiff was on the team – as always – to prepare the
7 communications stemming from the case. After meeting with Wergeles in May, however,
8 Plaintiff was removed from that team because of her complaints (protected under FEHA).

9 8. On July 14, the ACLU provided Plaintiff with a “Performance Improvement Plan”
10 citing major “deficiencies.” However, at the same time, the ACLU also gave Plaintiff her annual
11 performance evaluation, which exceeded job requirements/expectations. In the inconsistent PIP,
12 Plaintiff wanted to erase Plaintiff’s 10 years of exceptional work.

13 9. This nitpicking of Plaintiff’s work and person was done because of her age and
14 because of her gender – the ACLU and its agents did not treat younger or male employees and the
15 way it treats women over the age of 50 and the way it treats Plaintiff. The ACLU’s conduct was
16 also done in retaliation for speaking out against being treated differently.

17 10. Despite following the PIP, the ACLU criticized Plaintiff’s performance and found a
18 way to label Plaintiff’s work as “deficient.” This included removing job duties and telling others
19 to not bring communications work to the communications department. This was done in
20 retaliation for Plaintiff’s workplace FEHA violation complaints. And, the ACLU created a hostile
21 work environment.

22 11. Some of Chavez-Peterson and the ACLU’s egregious conduct stems from the
23 Chavez-Peterson/ACLU 30-Day follow-up the PIP:

- 24 a. One example that runs through from PIP to Termination: As part of the PIP,
25 Chavez-Peterson required that Plaintiff (a 10 year communications director who,
26 with respect to communications, took a small/backward affiliate into the current
27 decade) begin having meetings with Debra Sanchez from ACLU National. By any
28 reasonable view, this was a demoralizing and demoting request. However, Plaintiff
communicated with Ms. Sanchez and made forward progress in their discussions.

1 They got along well, and Plaintiff followed all of Ms. Sanchez’s directions and put
2 in a great amount of work reaching out to many ACLU affiliates looking into
3 vision plans, vision statements, and best practices that had worked well for the
4 particular affiliates. Plaintiff received nothing from the affiliates. And, Ms.
5 Sanchez told Plaintiff that ACLU National had only recently developed a
6 communications plan for the first time. With these positive steps toward following
7 the PIP, Plaintiff was shocked by Chavez-Peterson and ACLU’s negative 30-day
8 follow-up; in the August 23, 2016 memo, Chavez-Peterson acknowledged that
9 Plaintiff spoke with Ms. Sanchez. But then, the Chavez-Peterson/ACLU report
10 distorted reality. Chavez-Peterson stated, “it is clear you have not approached this
11 task in the spirit in which I had hoped.” A few days later, Chavez-Peterson told
12 Plaintiff in person that Chavez-Peterson spoke with Ms. Sanchez, that Ms. Sanchez
13 felt Plaintiff was not making progress or taking the tasks seriously, which showed
14 Chavez-Peterson that Plaintiff was not approaching the PIP in the correct “spirit.”
15 This was a bold-faced lie. Chavez-Peterson lied about what Ms. Sanchez stated –
16 and she lied to Ms. Sanchez. Indeed, Ms. Sanchez said nothing of the sort. Ms.
17 Sanchez told Plaintiff that in Ms. Sanchez’s conversation with Chavez-Peterson,
18 Chavez-Peterson stated the ACLU (San Diego) needed “someone who could grow
19 with the organization,” (i.e., a person younger than Plaintiff), and that Plaintiff was
20 still “out there doing Know Your Rights presentations.” Chavez-Peterson lied here.
21 Plaintiff had not done one of these presentations for over 3 years. Chavez-Peterson
22 lied to Ms. Sanchez as a way to undermine the progress Plaintiff made on the PIP
23 requirements. This was the type of action Chavez-Peterson used often with respect
24 to Plaintiff. And, the manifestation of that conduct expressed itself throughout the
25 PIP and termination process.

26 12. The ACLU refused to give Plaintiff specific examples (despite numerous requests)
27 of her so-called “deficiencies” that made up the retaliatory PIP, it refused to acknowledge the
28 ways Plaintiff was completing the items proposed in the retaliatory PIP, and it began taking away
major projects and fundamental job duties from Plaintiff.

1 13. Further, Chavez-Peterson, Wergeles, and the ACLU hired an attorney to white-
2 wash the ACLU's illegal and deplorable conduct in the guise of an "investigation" into Plaintiff's
3 complaints. It was a hatchet job. The ACLU hired Attorney Brenda Kasper. Ms. Kasper was
4 deprived of certain information and/or she actively chose ignore information that benefited
5 Plaintiff and, instead, highlighted information (whether it was true or not) that was negative
6 toward Plaintiff. Kasper achieved these goals, in part, by interrogating Plaintiff's co-workers,
7 rather than performing actual interviews to discovery accurate information. The interrogations
8 were set up to discourage people from speaking freely about facts and encourage the people to
9 state only items that would benefit the Chavez-Peterson/Wergles/ACLU regime and pre-
10 determined "investigation finding."

11 14. One co-worker, who suffered an interrogation, told Plaintiff that the co-worker felt
12 intimidated by Kasper. The co-worker felt Kasper's lines of questioning were such that Kasper
13 had an expectation of what the answers should be, as opposed to finding out the actual facts, and
14 they were aggressive towards finding fault with Plaintiff. The co-worker had the feeling Kasper
15 had already made up her decision on how the investigation would conclude, which included
16 undermining the facts and Plaintiff herself – that this was a preemptive move towards Plaintiff.
17 Kasper made it clear that the answers would be reported directly to Chavez-Peterson and Wergeles
18 and Kasper made sure this co-worker knew the consequences of the statements given. This co-
19 worker was frightened at what Kasper could do to her job and reputation. This is how Kasper –
20 the hired gun – approached this "investigation." Simply put, Chavez-Peterson, Wergeles, and the
21 ACLU paid a premium price to have an outside service white-wash Plaintiff's claims and enable it
22 to continue its illegal practices. They did this at the expense and dignity of the employees, in a
23 clear abuse of power, and as a way to punish Plaintiff and other employees from speaking truth to
24 power.

25 15. At the end of the 60-day PIP, Plaintiff presented to Chavez-Peterson, Wergeles, and
26 the ACLU the ways she had achieved and surpassed the goals set in the retaliatory PIP. Even
27 though the 60-day PIP required the same of them, Chavez-Peterson, Wergeles, and the ACLU
28

1 provided nothing to Plaintiff. The ACLU stated that it wanted to wait until the hired attorney
2 completed the “investigation,” i.e., until their hired attorney gave them the information and
3 strategy needed to further retaliate against Plaintiff.

4 16. In all, Chavez-Peterson, Wergeles, and the ACLU discriminated and retaliated
5 against, and created a hostile working environment for Plaintiff in the following ways because of
6 her age and gender, and because she exercised her free speech and made protected complaints both
7 within the organization and to a State Agency. These items include the following:

- 8 a. Plaintiff was as referred to as the organizational “Elder” and often described as
9 “coddling” or “nurturing” junior staff, i.e. the Grandma of the ACLU;
- 10 b. Plaintiff was told (both before her DFEH complaint and after) that she wasn’t
11 “growing” with the organization, i.e., she is old;
- 12 c. Plaintiff was told not to act as a mentor to junior (in seniority and age) staff. The
13 only other senior staff member told this was also a female, over 50;
- 14 d. Plaintiff was singled out as having “lost the trust” of Chavez-Peterson’s trust, even
15 though the entire organization had been struggling with issues of trust – and still is;
- 16 e. Plaintiff was required to provide a two-year vision plan, when no other senior staff
17 members were asked to do so, especially her male counter-parts;
- 18 f. Plaintiff was required to meet weekly with the Executive Team, instead of every
19 other week as did the other senior management;
- 20 g. Plaintiff was required to meet with the executive assistant, where the other senior
21 management was not required to do so;
- 22 h. Plaintiff was held to account for “missing” meetings with the Advocacy Director,
23 even though it was the Advocacy Director who failed to attend the scheduled
24 meetings.
- 25 i. After filing the DFEH complaint, Chavez-Peterson engaged in activity to make
26 toward Plaintiff, including but not limited to:
 - 27 i. She effectively assumed Plaintiff’s role as Communications Director;
 - 28 ii. She solicited proposals for communications consultants to perform work
duties Plaintiff was working on and/or would have worked on;

- 1 iii. She regularly assigned New Media Strategist assignments without
2 discussing with Plaintiff;
- 3 iv. She blocked Plaintiff from her Facebook account, meaning Plaintiff could
4 no longer “tag” Chavez-Peterson in ACLU Facebook posts, a task the
5 Communications Department and Plaintiff would do as part of job duties;
- 6 j. Chavez-Peterson took away a number of projects Plaintiff built into her work plan
7 and handled:
- 8 i. Constitution Day – Plaintiff created this project 10 years ago. Each year,
9 the project grew in size, until this year, when Plaintiff was removed;
- 10 ii. The Duncan-Harvey litigation case. Plaintiff had worked on the
11 communications plan for this particular case until her complaints. The
12 plaintiffs decided later to not use the ACLU attorneys once they discovered
13 Plaintiff had been removed from communications;
- 14 iii. Many work duties were assigned to a “consultant” who was brought in *after*
15 Plaintiff made her protected workplace complaints;
- 16 iv. The ACLU instructed the Advocacy Director to instruct his entire team *not*
17 to solicit communications services from Plaintiff or her team (even though
18 she was the Communications Director)

19 17. These above actions weren’t enough for the ACLU. In October 2016, ACLU board
20 members Mark Adams (a licensed attorney who is subject to the Rules of Professional conduct on
21 discrimination) and Deborah Fritsch asked to meet privately with Plaintiff. Plaintiff believed the
22 ACLU was taking her complaints and concerns seriously. She was wrong.

23 18. Fritsch commented that the organization was “outgrowing” Plaintiff. Fritsch
24 recounted that she had a personal experience like this where she “did the right thing” and quit her
25 job. Attorney Adams was more blunt and direct - he said he couldn’t get into the “facts” of the
26 hired attorney’s investigation, but that the information – if exposed – would “hurt Rebecca’s
27 reputation in the community.” Adams reiterated this point several times during the private
28 meeting. Simply put, the board of the ACLU was making it clear that it would damage Plaintiff’s
29 reputation if she refused to quit. Attorney Adams and Ms. Frisch outright threatened Plaintiff.

1 Their actions were a direct result of the ACLU's age and gender discrimination of Plaintiff and
2 because Plaintiff exercised free speech and made protected complaints internally and outside of
3 the ACLU.

4 19. Plaintiff resisted the ACLU's multi-layered attacks and pressures to resign. As a
5 consequence, a few hours later, Plaintiff was put on administrative leave. A few days after that,
6 Plaintiff's employment was terminated. Incredibly, Chavez-Peterson's termination letter to
7 Plaintiff explicitly referenced the protected DFEH complaint Plaintiff had made against the ACLU
8 as a grounds for her termination.

9 20. The ACLU is an organization who states its Mission is to "fight[] for individual
10 rights and fundamental freedoms for all.." whose Vision is "a society where fairness prevails and
11 where liberty and justice exist for all..." and whose Core Values include "The dignity and equality
12 of every human being," "Vigilance against abuse of power," and "Speaking truth to power even
13 when its unpopular to do so." Chavez-Peterson, Wergeles, and the ACLU went out of their way to
14 make sure this Mission, this Vision, and these Core Values were trampled on with respect to
15 Plaintiff. Rather than treat her with dignity and as a person who has fought hard for over 10 years
16 for the ACLU cause, they threw her to the curb like a piece of garbage because she spoke out
17 against illegal activities and the Chavez-Peterson/Wergeles/ACLU abuse of power.

18 21. ACLU's pretext for terminating Rauber was confirmed after she was fired by Ms.
19 Chavez-Pederson, herself. Chavez-Pederson stated that she didn't have issues with Complainant's
20 work product/performance. Chavez-Pederson did have problems with "how [Rauber] handled the
21 situation," i.e., having made protected FEHA complaints and not buckling under the retaliatory
22 actions of Chavez-Pederson, the ACLU, and its Board of Directors. These admissions – directly
23 from the highest source at Defendant ACLU show this was all a sham to illegally terminate
24 Rauber's employment and confirm that Chavez-Pederson, the ACLU, and its Board retaliated
25 against Rauber for making, and continuing to make, such complaints and stand up for her rights.

26 22. On November 17, 2015, under Labor Code §§ 2699(a) and 2699.3, Plaintiff
27 provided notice in writing, by certified mail, to the California Labor Workforce Development
28 Agency ("LWDA") and Defendant, that Plaintiff intended to assert PAGA claims pursuant to
section 2699(a) on her own behalf, and in a representative capacity on behalf of other current or

1 former employees, for Defendant’s violations of specified provisions of the California Labor
2 Code. The LWDA has not provided notice to Plaintiff’s attorneys of its intent to investigate the
3 alleged violations as provided in Labor Code § 2699.3.

4 23. On July 20, 2016, Plaintiff filed a complaint with the California Department of Fair
5 Employment and Housing (“DFEH”) and received a “right to sue” letter. On September 16, 2016,
6 Plaintiff amended her DFEH complaint and amended it again on March 10, 2017.

7 **FIRST CAUSE OF ACTION**

8 **AGE DISCRIMINATION**

9 **[Cal. Govt. Code §12940]**

10 24. Plaintiff re-alleges and incorporates each allegation in the complaint.

11 25. Plaintiff was at all times material hereto an employee covered by Cal. Gov’t. Code
12 § 12940, et seq. prohibiting discrimination in employment on the basis of age.

13 26. Defendant is and, at all times material hereto, was an employer and/or person
14 within the meaning of the Fair Employment and Housing Act and, as such, barred from
15 discrimination of Plaintiff on the basis of her age as set forth in Cal. Gov’t. Code § 12940(a).

16 27. Defendant or its employees failed to promote Plaintiff, disciplined Plaintiff, placed
17 Plaintiff on an unwarranted PIP, and ultimately terminated her employment based on her age in
18 violation of Cal. Gov’t. Code § 12940(a).

19 28. As a direct, foreseeable and proximate result of Defendant’s conduct, Plaintiff has
20 sustained and continues to sustain substantial losses in earnings, employment benefits,
21 employment opportunities, and other economic losses in an amount to be determined at time of
22 trial. Plaintiff has sought to mitigate these damages.

23 29. As a direct, foreseeable, and proximate result of Defendant’s conduct, Plaintiff has
24 suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental
25 pain and anguish, all to her damage in a sum to be established according to proof.

26 30. As a result of Defendant’s deliberate, outrageous, despicable conduct, Plaintiff is
27 entitled to recover punitive and exemplary damages in an amount commensurate with Defendant’s
28 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

1 **THIRD CAUSE OF ACTION**

2 **RETALIATION**

3 **[Cal. Gov. Code § 12940(h)]**

4 40. Plaintiff re-alleges and incorporates each allegation in the complaint.

5 41. Defendant's termination of Plaintiff's employment constituted unlawful retaliation,
6 a violation of Government Code § 12940(h) and all applicable regulations under the California
7 Administrative Code.

8 42. As a direct, foreseeable and proximate result of Defendant's conduct, Plaintiff has
9 sustained and continues to sustain substantial losses in earnings, employment benefits,
10 employment opportunities, and other economic losses in an amount to be determined at time of
11 trial. Plaintiff has sought to mitigate these damages.

12 43. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
13 suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental
14 pain and anguish, all to her damage in a sum to be established according to proof.

15 44. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is
16 entitled to recover punitive and exemplary damages in an amount commensurate with Defendant's
17 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

18 **FOURTH CAUSE OF ACTION**

19 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

20 45. Plaintiff re-alleges and incorporates each allegation in the complaint.

21 46. Plaintiff performed work for Defendant, as an employee, as stated herein.

22 47. When an employer's discharge of an employee violates fundamental principles of
23 public policy, the discharged employee may maintain a tort action and recover damages
24 traditionally available in such actions. *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167,
25 170. A *Tameny* claim may be based on the employee's reporting of an alleged violation of a
statute of public important. *Gant v. Sentry Ins.* (1992) 1 Cal.4th 1083, 1090.

26 48. An employee can maintain a tort claim against her employer where employment is
27 terminated in retaliation for the employee's 'whistle-blowing' activities. An employee can
28

1 maintain a tort claim against her employer where employment is terminated based in FEHA
2 violations, as set out in this complaint.

3 49. Defendant terminated Plaintiff's employment because she reported illegal and
4 unethical working conditions.

5 50. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
6 sustained and continues to sustain substantial losses in earnings, employment benefits,
7 employment opportunities, and Plaintiff has suffered other economic losses in an amount to be
8 determined at time of trial. Plaintiff has sought to mitigate these damages.

9 51. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
10 suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental
11 pain and anguish, all to her damage in a sum to be established according to proof.

12 52. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is
13 entitled to recover punitive and exemplary damages in an amount commensurate with Defendant's
14 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

15 53. In addition to such other damages as may properly be recovered herein, Plaintiff is
16 entitled to recover prevailing party attorney's fees.

17 **FIFTH CAUSE OF ACTION**

18 **HOSTILE WORK ENVIRONMENT**

19 **[Cal. Govt. Code §12940(j)]**

20 54. Plaintiff re-alleges and incorporates each allegation in the complaint.

21 55. Plaintiff was subjected to unwanted harassing conduct because of her age, gender,
22 and because she made protected workplace complaints, as set out above. The harassing conduct
23 was severe or pervasive. A person in Plaintiff's circumstances would have considered the work
24 environment to be hostile or abusive, and Plaintiff considered it to be hostile or abusive. The
25 illegal, hostile, and harassing conduct was carried out by Chavez-Peterson and Wergeles, the
26 executive team of the ACLU, and by ACLU Board members, as set out in this complaint.

27 56. As a direct, foreseeable, and proximate result of the ACLU's conduct, Plaintiff has
28 sustained and continues to sustain substantial losses in earnings, employment benefits,

1 employment opportunities, and Plaintiff has suffered other economic losses in an amount to be
2 determined at time of trial. Plaintiff has sought to mitigate these damages.

3 57. As a direct, foreseeable, and proximate result of the ACLU's conduct, Plaintiff has
4 suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and
5 anguish, all to her damage in a sum to be established according to proof.

6 58. As a result of the ACLU's deliberate, outrageous, despicable conduct, Plaintiff is
7 entitled to recover punitive and exemplary damages in an amount commensurate with Defendant's
8 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

9 **SIXTH CAUSE OF ACTION**

10 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, RETALIATION**

11 **[Cal. Govt. Code §12940(k)]**

12 59. Plaintiff re-alleges and incorporates each allegation in the complaint.

13 60. The defendants by permitting the discrimination, harassment/hostile work
14 environment, and retaliation, as set out in this complaint, to occur and terminating Plaintiff's
15 employment because of these protected activities, failed to take all reasonable steps necessary to
16 prevent such discrimination, harassment, and retaliation from occurring, in violation of
17 Government Code § 12940(k) and all applicable regulations under the California Administrative
18 Code.

19 61. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
20 sustained and continues to sustain substantial losses in earnings, employment benefits, and
21 employment opportunities. Plaintiff has suffered other economic losses in an amount to be
22 determined at the time of trial. Plaintiff has reasonably attempted to mitigate these damages.
23 Plaintiff has been damaged in an amount according to proof at trial.

24 62. The conduct by the ACLU was done with malice or oppression and in conscious
25 disregard of Plaintiff's rights under FEHA and violated the public policy of California. This
26 conduct was by defendant's officers or managing agents and/or the defendant's officers or
27 managing agents ratified the wrongful conduct of other management-level employees of the
28 defendant and/or authorized, in advance, the wrongful conduct of management-level employees of

1 defendant. This entitles Plaintiff to recover punitive damages against defendants under Civil Code
2 § 3294.

3 **SEVENTH CAUSE OF ACTION**

4 **WHISTLEBLOWER - RETALIATION**

5 **[Cal. Labor Code §1102.5]**

6 63. Plaintiff re-alleges and incorporates each allegation in the complaint.

7 64. It is unlawful under Labor Code § 1102.5(a) for an employer, or any person acting
8 on behalf of the employer, to make, adopt or enforce any rule, regulation or policy that prevents an
9 employee from disclosing information to a government or law enforcement agency, to a person
10 with authority over the employee, or to another employee who has authority to investigate,
11 discover, or correct the violation or noncompliance, or from providing information to, or testifying
12 before, any public body conducting an investigation, hearing, or inquiry, if that employee has
13 reasonable cause to believe that such information may disclose a violation of or noncompliance
14 with a local, state, or federal rule or regulation.

15 65. It is unlawful under Labor Code § 1102.5(b) for an employer, or any person acting
16 on behalf of the employer, to retaliate against an employee for disclosing information, or because
17 the employer believes that the employee disclosed or may disclose information, to a government
18 or law enforcement agency, to a person with authority over the employee or another employee
19 who has the authority to investigate, discover, or correct the violation or noncompliance, or for
20 providing information to, or testifying before, any public body conducting an investigation,
21 hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses
22 a violation of state or federal statute, or a violation of or noncompliance with a local, state, or
23 federal rule or regulation.

24 66. It is unlawful under Labor Code § 1102.5(c) for an employer, or any person acting
25 on behalf of the employer, to retaliate against an employee for refusing to participate in an activity
26 that would result in a violation of state or federal statute, or a violation of or noncompliance with a
27 local, state, or federal rule or regulation.

28 67. Through the actions as stated above, the ACLU and those acting on behalf of it,
violated Labor Code § 1102.5(a),(b), and (c) in its treatment of Plaintiff while she was employed

1 by the ACLU and in terminating her employment in retaliation for making complaints as stated
2 above.

3 68. As a direct, foreseeable, and proximate result of the ACLU's conduct, Plaintiff has
4 sustained and continues to sustain substantial losses in earnings, employment benefits,
5 employment opportunities, and Plaintiff has suffered other economic losses in an amount to be
6 determined at time of trial. Plaintiff has sought to mitigate these damages.

7 69. As a direct, foreseeable, and proximate result of the ACLU's conduct, Plaintiff has
8 suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and
9 anguish, all to her damage in a sum to be established according to proof.

10 70. As a result of the ACLU's deliberate, outrageous, despicable conduct, Plaintiff is
11 entitled to recover punitive and exemplary damages in an amount commensurate with Defendant's
12 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

13 **EIGHTH CAUSE OF ACTION**
14 **PRIVATE ATTORNEY GENERAL ACT**
15 **[Labor Code § 2699]**

16 71. Plaintiff re-alleges and incorporates each allegation in the complaint.

17 72. The LWDA did not respond to Plaintiff's PAGA notice within the statutory period
18 from the original postmark date of November 17, 2016, and, as a result, Plaintiff has perfected her
19 respective rights to sue Defendants, and each of them, in a civil action, and to collect statutory
20 penalties, pursuant to Labor Code section 2699.3(a)(2)(A)(1).

21 73. As a result of the acts alleged above, Plaintiff brings this action on her own behalf
22 and in his representative capacity on behalf of other current or former aggrieved employees, for
23 penalties pursuant to California Labor Code section 2699 for Defendants' violations of the
24 enumerated Labor Code sections, including, but not limited to sections 1102.5, et seq.

25 74. Pursuant to California Labor Code section 2699, Plaintiffs are entitled to be
26 awarded twenty-five (25%) percent of all penalties due under California law, in addition to
27 interest, attorney's fees and costs.
28

1 75. The Court should award seventy-five (75%) percent of all penalties due under
2 California law to the State of California.

3 76. Plaintiffs therefore seek to recover from Defendants, and each of them, allowable
4 penalties, interest, costs, and attorneys' fees, in an amount according to proof at trial, in
5 accordance with Labor Code sections 2699, et seq.

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REQUEST FOR RELIEF

THEREFORE, Plaintiffs pray for the following relief against Defendant the American Civil Liberties Union Foundation of San Diego and Imperial Counties and DOES 1 through 10, inclusive:

1. For compensatory damages, including loss of wages, promotional opportunities, benefits and other opportunities of employment, according to proof;
2. For special damages in an amount according to proof;
3. For general damages in an amount according to proof;
4. For back pay, front pay, and other monetary relief;
5. For punitive damages in an amount necessary to make an example of and to punish defendants, and to deter future similar misconduct;
6. For costs of suit, including attorney’s fees, as permitted by law;
7. For an award of interest, including prejudgment interest, at the legal rate as permitted by law;
8. For penalties as permitted by law;
9. Injunctive relief;
10. Attorneys’ fees, expenses, and costs of this action pursuant to statute, including but not limited to Labor Code Section 2699 et. Seq, and in equity; and
11. For such other and further relief as the Court deems proper and just under all the circumstances.

Plaintiff demands a jury trial on all issues in this case.

DATED: March 10, 2017

THE PENDERGAST LAW FIRM, PC



RORY PENDERGAST
Attorneys for Plaintiff Rebecca Rauber