

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Richard Fruin

1 Dan Stormer, Esq. [S.B. #101967]
2 Brian Olney, Esq. [S.B. #298089]
3 HADSELL STORMER RENICK & DAI LLP
4 128 N. Fair Oaks Avenue
Pasadena, California 91103
Telephone: (626) 585-9600
Facsimile: (626) 577-7079

5 Attorneys for Plaintiff
6 WILLIAM BURKE
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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

14 WILLIAM BURKE,

15 Plaintiff,

16 vs.

17 THE JOHN RANDOLPH HAYNES AND DORA
18 HAYNES FOUNDATION, DANIEL
MAZMANIAN, ROBIN KRAMER, ROBERTO
SURO, JANE PISANO, and DOES 1 through 10,

19 Defendants.
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Case No: **22STCV04565**

COMPLAINT FOR DAMAGES:

1. Retaliation in Violation of Labor Code § 1102.5(b)
2. Retaliation in Violation of Labor Code § 1102.5(c)
3. Wrongful Termination in Violation of Public Policy (Labor Code § 1102.5)
4. Breach of Implied Covenant of Good Faith and Fair Dealing
5. Violation of Labor Code §§ 201(a), 203, 227.3, 558.1
6. Violation of Labor Code §§ 226(c), 558.1
7. Violation of Labor Code § 1198.5
8. Private Attorneys General Act, Representative Action for Civil Penalties, Labor Code § 2698 *et seq.*

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff William Burke was the 74-year old Administrative Director at Defendant The John Randolph Haynes and Dora Haynes Foundation (“The Haynes Foundation” or “The Foundation”) for more than fourteen years, from his hiring in June 2007 until his abrupt wrongful termination in September 2021. Throughout this period, Mr. Burke received exemplary performance evaluations every year as well as merit-based salary increases and bonuses in recognition of his consistently outstanding work. He never once received any form of discipline. Then Mr. Burke began raising legitimate legal concerns about and refused to participate in The Foundation’s unlawful activities including the abandonment of its charitable purpose and improper expenditure of Foundation assets, and everything changed.

2. The first purported reason offered for Mr. Burke’s discharge, which was not given until nearly two weeks after his firing, was that the Foundation would “benefit from new leadership at this time.” After Mr. Burke informed the Foundation that his firing in retaliation for his whistleblowing activities violated Labor Code § 1102.5, the Foundation *admitted* that it terminated him in response to his complaints of unlawful activity by the Foundation and certain members of its Board.

3. Mr. Burke has been devastated both economically and emotionally by his wrongful discharge. Once a highly compensated professional with a sterling reputation, Mr. Burke stands almost no chance of finding comparable employment at the age of 74. The stress and humiliation of his termination, damaged reputation, and loss of professional identity have been profound.

PARTIES

4. Plaintiff William Burke is, and at all relevant times was, an individual residing in Los Angeles County. Mr. Burke was employed in Los Angeles County by Defendant Haynes Foundation as its Administrative Director from 2007 until his wrongful termination in 2021.

5. Defendant The John Randolph Haynes and Dora Haynes Foundation (“Haynes Foundation” or “The Foundation”) is, and at all relevant times was, a private charitable trust with its headquarters and principal place of business located in Los Angeles County at 888 West Sixth Street, Suite 1150, Los Angeles, California 90017. All of its employees and board members work in Los Angeles County.

6. Defendant Dr. Daniel Mazmanian is, and at all relevant times was, a Board Member of

1 Defendant Haynes Foundation. He resides in the County of Orange.

2 7. Defendant Robin Kramer is, and at all relevant times was, a Board Member of Defendant
3 Haynes Foundation. She resides in the County of Los Angeles.

4 8. Defendant Roberto Suro is, and at all relevant times was, a Board Member of Defendant
5 Haynes Foundation. He resides in the County of Los Angeles.

6 9. Defendant Dr. Jane Pisano is, and at all relevant times was, a Member and President of the
7 Board of Defendant Haynes Foundation. Dr. Pisano resides in the County of Los Angeles. In her role as
8 President, Dr. Pisano was regularly involved in the operations of The Haynes Foundation and assumed an
9 even more active role managing The Haynes Foundation's operations following Mr. Burke's termination.

10 10. Defendants Does 1 through 10 are sued under fictitious names pursuant to Code of Civil
11 Procedure section 474. The true names and capacities of Does 1-10 are currently unknown to Plaintiff.
12 Plaintiff will amend this Complaint or seek leave to do so when the true names and capacities of these
13 Defendants have been ascertained. Plaintiff is informed, believes, and on that basis alleges, that each
14 fictitiously named Defendant is responsible in some way for the acts and failures to act herein alleged, and
15 that Plaintiff's injuries as herein alleged were legally caused by the conduct of each such Defendant.

16 11. Plaintiff is informed, believes, and thereupon alleges that, at all times material herein, each
17 of the Defendants was the agent or employee of, and/or working in concert with, his/her co-Defendants
18 and was acting within the scope of such agency, employment, and/or concerted activity. Plaintiff alleges
19 that to the extent that certain acts and omissions were perpetrated by certain Defendants, the remaining
20 Defendant or Defendants confirmed and ratified said acts and omissions.

21 12. Whenever and wherever reference is made in this Complaint to any act or failure to act by
22 a Defendant or Defendants, such allegations and references shall also be deemed to mean the acts and
23 failures of each Defendant acting individually, jointly and severally.

24 **JURISDICTION AND VENUE**

25 13. This Court has jurisdiction over this action because Plaintiff as well as Defendants Haynes
26 Foundation, Mazmanian, Pisano, Kramer, Suro and Does 1-10 are residents of California, all parties
27 transact business in the State of California, and because the claims asserted arise from conduct occurring
28 in California.

14. Venue is proper in the County of Los Angeles because all parties do business in Los Angeles, all of the acts giving rise to the claims asserted herein were committed in Los Angeles County, Defendants Kramer, Pisano, Suro, and Does 1-10 reside in Los Angeles County, and the Foundation has its headquarters and principal place of business in Los Angeles County.

FACTUAL ALLEGATIONS

A. Mr. Burke Was an Exemplary Employee at the Foundation

15. At the time of his wrongful termination, William Burke was a 74-year-old decorated war veteran with decades of experience as a successful business executive.

16. Mr. Burke graduated from the U.S. Military Academy in West Point, New York in 1969 with a commission in the U.S. Army Corps of Engineers. He served on active and reserve duty for over thirty years. This duty included a tour in Vietnam where he commanded three separate combat engineer units, and he was awarded a Purple Heart, two Bronze Stars and the Legion of Merit medals, as well as two tours in West Germany regarding tactical nuclear weapons.

17. Mr. Burke earned an ME from UC Berkeley in 1974. After completing his graduate studies, he joined The Aerospace Corporation in California where he was promoted to General Manager of the Business Management Division where he oversaw \$500 million in annual billing through the company's contract with the U.S. Air Force. In 1999, Mr. Burke joined Global Crossing and Asia Global Crossing where he spearheaded large international business initiatives in Asia.

18. In June 2007, Mr. Burke was recruited to become the Administrative Director at the Haynes Foundation, one of the oldest private foundations in Los Angeles and a leading supporter of social science research in the City. Mr. Burke and his Administrative Assistant, Denia Camacho, were the Foundation's only staff members. Mr. Burke was responsible for administering all aspects of the Foundation's finances, investments and various grant programs. He initiated a robust outreach program to all major academic and policy institutions within the five-county region of Southern California, improved and expanded the Haynes Foundation's online presence, and wrote and produced the Haynes Foundation's bi-annual reports which serve as its principal marketing tool. Mr. Burke also was responsible for all aspects of over seventy meetings of the Haynes Board of Trustees, including the creation of Board books, supporting materials, and meeting minutes.

1 19. Mr. Burke’s performance was exceptional throughout his fourteen-year tenure at the
2 Haynes Foundation. He received exemplary performance evaluations every year as well as merit-based
3 salary increases and bonuses in recognition of his consistently outstanding work. Through his entire
4 career with the Foundation, Mr. Burke never once received any form of discipline.

5 **B. The Haynes Foundation’s Purpose Is to Fund Educational Research to Benefit the**
6 **Lives of Working Angelenos**

7 20. The charitable trust doctrine requires any private charitable foundation to comply with the
8 foundation’s governing document, a declaration of trust. *See* Probate Code §§ 15200(a), 16000; Bus. &
9 Profs. Code § 17510.8.¹ The California Attorney General oversees enforcement of the Haynes
10 Foundation’s Declaration of Trust. *See* Govt Code §§ 12588, 12591, 12598(a). As the *Attorney*
11 *General’s Guide for Charities* explains, “The law of charitable trusts requires that trusts created for
12 specific charitable purposes be carried out for those stated purposes.”

13 21. The Haynes Foundation’s initial Declaration of Trust was adopted in 1926, amended in
14 1934, and amended once more through a California court proceeding to remove a depression-era
15 limitation on investments. The operative version of the Declaration of Trust prohibits any future “addition
16 or omission, change or modification” to the Trust’s purpose and governing principles.

17 22. The purpose of the Haynes Foundation, set forth in Paragraphs Sixth and Eighteenth of the
18 Declaration of Trust, is educational. The Foundation’s specific educational purpose is to “improve the
19 physical and educational standards of our people” and “better the conditions under which working people
20 live and labor.” As this statement makes clear, the intended beneficiaries of this purpose are the working
21 people of Los Angeles, not the Trustees of the Foundation. Paragraph Sixth of the Declaration of Trust
22 states that the Foundation should accomplish its purpose through “appropriate research, discovery,
23 instruction and education” and “may publish and disseminate the knowledge so gained[.]”

24 23. In *Collier vs. Lindley*, 203 Cal. 641, 655 (1928), the California Supreme Court confirmed
25 that the main purpose of the Haynes Foundation is educational. The Court described the Foundation as
26 “charitable in character and educational in method,” adding that the Founders did not seek to craft
27 legislation or enact reforms. The views of the Supreme Court were later confirmed in public statements

28 ¹ Unless otherwise stated, all code citations are to the California legislative code.

made by Dr. Haynes, and by the noted historian, Tom Sitton, who produced a two-volume biography on the life of Dr. and Mrs. Haynes and the Haynes Foundation.

C. Mr. Burke Exposes the Illegality of a Plan by Several Board Members to Change the Foundation's Purpose

24. Beginning in early 2020, three members of the Haynes Foundation Board of Trustees—Dr. Daniel Mazmanian, Robin Kramer, and Roberto Suro—sought to change the Foundation's purpose “from the funding of *research*” as prescribed by the Founders and required by the Declaration of Trust to “an approach that funds actions with impact,” with a specific focus on “democracy and governance.” Dr. Mazmanian and Ms. Kramer also sought to partner the Haynes Foundation with much larger Foundations, Funds, Centers, Academies, and Endowments, and retain a panel of contractors that Mr. Burke reasonably believed would exercise decision-making authority over the use of Foundation assets. Mr. Burke reasonably believed that this extraordinary delegation of authority would violate the Declaration of Trust's prohibition on the appropriation of any funds without a majority vote by the Board of Trustees.

25. Mr. Burke advised the Board that Dr. Mazmanian had previously sent a letter around January 1997 to then-Board President Donn Miller proposing the same plan to change the Foundation's purpose to “Democracy and Democratic Governance,” and vest authority over the appropriation of assets in a subset of the Board of Trustees. Mr. Miller appropriately rejected this proposal at the November 1998 Board meeting and directed that “decisions regarding grants, programs and budgets would all continue to be made by the Trustees,” consistent with the Haynes Foundation's Declaration of Trust. When Mr. Burke shared these facts with the Trustees, they were not aware of this information (except for Dr. Mazmanian).

26. Also around June 2020, Board President Dr. Jane Pisano asked Mr. Burke to begin reviewing various proposals and action plans submitted by the Trustees in furtherance of the changed purpose sought by Dr. Mazmanian, Ms. Kramer, and Mr. Suro. From that time and continuing until his wrongful termination in September 2021, Mr. Burke did as he was directed to do, repeatedly raising concerns with the Board in telephone calls and emails that the Trustees' proposals and action plans were inconsistent with the Foundation's Declaration of Trust and the Trustees' fiduciary duties to the Foundation. Mr. Burke reasonably believed that the proposals and action plans, if implemented, would

1 violate the Foundation's Declaration of Trust and California law. He therefore repeatedly urged the
2 Trustees to retain counsel to review the legality of the proposals and action plans before acting on them.
3 The Board never retained counsel to review and analyze the serious issues Mr. Burke raised.

4 27. In late 2020, the Board hired a consultant named Mary Chambers to interview the Board
5 members and solicit their views on the change to the Foundation's focus advocated by Dr. Mazmanian,
6 Ms. Kramer, and Mr. Suro. Ms. Chambers presented her findings at the June 2021 Board meeting. To
7 Mr. Burke's surprise, Ms. Chambers then submitted a threadbare two-page proposal on July 15, 2021, to
8 Dr. Pisano, with a copy to Ms. Kramer and Dr. Mazmanian, requesting an open-ended contract to
9 implement the change in purpose advocated by Dr. Mazmanian, Ms. Kramer and Mr. Suro. Dr. Pisano
10 asked Mr. Burke to comment on this proposal as well. In or around late July 2021, Mr. Burke prepared
11 and sent a series of emails to members of the Board's Executive Committee, Dr. Pisano, Philip Hawley,
12 and Gilbert Ray, disclosing the many deficiencies in Ms. Chambers' proposal. Mr. Burke highlighted the
13 proposal's failure to comply with the Foundation's own policies and requirements governing its contracts
14 by, among other things, failing to provide any information regarding staffing levels, budgets, the
15 contract's end date and end product, and Ms. Chamber's background, as well as legal requirements
16 imposed on the Foundation as a result of its non-profit 501(c)(3) status. More important, Mr. Burke also
17 identified the myriad ways in which the proposal appeared to violate California law by, among other
18 things, violating the Declaration of Trust, violating the Trustees' fiduciary duties of good faith, loyalty,
19 and care, and creating conflicts of interest including the potential for self-dealing by Board members. **Mr.**
20 **Burke was so concerned about the legal risks the proposal created for the Haynes Foundation that**
21 **he pointedly concluded one email by urging the Board to retain knowledgeable counsel to avoid**
22 **"jeopardiz[ing] its 95 year old status as a Charitable Trust."**

23 28. By the Summer of 2021, Dr. Pisano had fully endorsed the change in purpose advocated
24 by Dr. Mazmanian, Ms. Kramer and Mr. Suro. Dr. Pisano clearly recognized the transformative nature of
25 the changes to the Haynes Foundation's purpose espoused by Dr. Mazmanian, Ms. Kramer, and Mr. Suro.
26 In emails sent in or around late July and early August 2021, Dr. Mazmanian and Ms. Kramer expressed
27 frustration and disappointment regarding reservations expressed by Dr. Pisano to execute the Chambers
28 proposal. In response, Dr. Pisano stated that with respect to the change in the purpose of the Foundation:

1 “I do not see this as a project or initiative but a *transformation of the Haynes Foundation*. Having full
2 consensus and agreement from the Board will accelerate not impede[] the progress of this important
3 *transformation*.” (Emphasis added.)

4 29. In August 2021, in a document titled, “Assess and Report Back,” Dr. Pisano expressed the
5 culmination of her thinking and that of the Board on the need to fundamentally transform the Haynes
6 Foundation from funding research and education to funding actions. In that document, Dr. Pisano stated:
7 “The need for *problem-solving and solutions* is greater now than in any other time in my experience in
8 southern California, in fact, throughout the country.... Individual researchers relying on data or case
9 studies alone will not *generate change*.” (Emphasis added.) Dr. Pisano stated: “To get Going: 1). What
10 actions can lead to *immediate action*? 2). How can we use our Board, a network of advisors and our
11 resources to find *new solutions*? 3). Look for innovations and innovators to invest in, to make a
12 difference.” (Emphasis added.) Dr. Pisano further noted: “Based on the discussion of the Board over the
13 past year, I perceive that there is a consensus that as a Foundation we need to *shift from the funding of*
14 *research* and discussions to an approach that *funds actions with impact*.” (Emphasis added.)

15 **D. Mr. Burke Refuses to Participate in the Illegal Plan to Change the Foundation’s**
16 **Purpose**

17 30. Under the Foundation’s ordinary procedures, Mr. Burke would review proposed contracts,
18 ensure they conform to the Foundation’s policies, and transmit them to the full Board for consideration.
19 Mr. Burke reasonably believed that Ms. Chambers’ proposal would be illegal even if it conformed to the
20 Haynes Foundation’s policies, which it did not, and refused to process the proposal in accordance with the
21 normal procedures of the Foundation.

22 **E. Mr. Burke Discloses to the Board that the Foundation’s Discretionary Grant**
23 **Program Is Unlawful**

24 31. In the 1990’s, the Foundation created a Trustee Discretionary Grant Program (the
25 “Program”). Under this Program, each Trustee receives \$25,000 of Haynes Foundation assets each fiscal
26 year, and the President of the Board receives \$50,000, to direct at their sole discretion to the non-profit
27 organizations of their choosing. Dr. Pisano, Dr. Mazmanian, and Mr. Suro repeatedly directed their
28 discretionary funds to their common employer, the University of Southern of California, including tens of

1 thousands of dollars to USC's Sol Price School of Public Policy, where Dr. Pisano, Dr. Mazmanian, and
2 Mr. Suro are professors. Upon joining the Haynes Foundation, Mr. Burke was told that the Haynes
3 Foundation's lawyers had reviewed and approved the Program.

4 32. In mid-2021, the Board directed Mr. Burke to confirm the accuracy of the Haynes
5 Foundation's attestation in its annual tax filing, which attestation, among other items, addresses acts of
6 self-dealing. Mr. Burke searched the Haynes Foundation's files and uncovered a memorandum apparently
7 unknown to the Board documenting that the Program had never been reviewed, let alone approved, by
8 counsel to the Haynes Foundation. Mr. Burke recognized that the Program violated the Haynes
9 Foundation's Declaration of Trust, and thus California law, and reasonably believed as such, for reasons
10 including the following:

- 11 a. Paragraph Twenty-Seventh of the Foundation's Declaration of Trust states that
12 "No money shall be appropriated for any purpose . . . unless the majority of all of
13 the then actual Trustees vote in favor of the same." Here, however, the full Board
14 never reviewed or approved the discretionary grants directed by the individual
15 Trustees.
- 16 b. The Program does not require the Trustees to use the Haynes Foundation assets
17 provided to them to benefit the "working people" of Los Angeles as required by
18 the Declaration of Trust, and many of the specific discretionary grants directed by
19 individual Trustees did not appear to have been made pursuant to this required
20 purpose.
- 21 c. Three Trustees engaged in apparent self-dealing by directing some or all of their
22 individual allocations to their own employer, the University of Southern
23 California, in violation of the Trustees' fiduciary duties under Probate Code §§
24 16004 and 16102(a) and Corporations Code §§ 5231 and 5233. These allocations
25 also violate Paragraph Eighth, section six of the Declaration of Trust, which states
26 that "No money shall be voted to any corporation or organization herein referred to
27 in which any Trustee hereunder shall hold a salaried position, excepting by
28 unanimous vote of all Trustees present or represented at a regular meeting of the

Board.” As noted, none of these Discretionary Grant Program allocations were approved by a unanimous vote of the Trustees.

33. In August 2021, Mr. Burke disclosed the memorandum and his concerns that the Discretionary Grant Program violated state law to Dr. Pisano and urged her to retain counsel on behalf of the Haynes Foundation to review the Program. The Haynes Foundation never took these steps.

F. Mr. Burke Refuses to Participate in the Unlawful Discretionary Grant Program

34. Mr. Burke became so concerned with the illegality of the Program and the Board’s unwillingness to address it that he refused to continue participating in the Program. Mr. Burke’s responsibilities as Administrative Director included circulating a memorandum to the Trustees around the beginning of each fiscal year on September 1 asking each Trustee to provide a list of grantees to whom the Trustee would direct their Discretionary Grant Program funds that year. Mr. Burke would then sign the checks.² However, Mr. Burke never prepared or sent a memorandum for the new fiscal year commencing September 2021 asking the Trustees for their list of grantees for the disbursement of funds pursuant to the Program because he did not want to participate in the unlawful use of Foundation assets.

G. Mr. Burke Challenges the Foundation’s Failure to Issue Grants

35. California law and the Internal Revenue Code of 1986 require private foundations to spend a minimum amount of their money or property on charitable purposes each year.³ If a foundation fails to spend the minimum distributable amount in a timely manner, it is subject to a 30% excise tax on the undistributed income under Section 4942 of the Internal Revenue Code.

36. In August 2020, the Foundation’s accountants, Williams & Ribb, advised the Foundation that it was at risk of failing to spend its minimum distributable amount for the fiscal year. Rather than issue sufficient grants or at least pay the 30% excise tax, the Foundation contributed \$1.0 million to a “donor advised fund” (DAF) at the California Community Foundation. In June 2021, U.S. Senators Angus King and Charles Grassley introduced The Accelerating Charitable Efforts (ACE) Act to prohibit private foundations that fail to satisfy their minimum distribution requirement from directing funds to a DAF or a similar organization to avoid paying the excise tax. In August 2021, the Foundation’s

² Checks in excess of \$10,000 also required a second signature by a Trustee.

³ Probate Code § 16101 and Internal Revenue Code of 1986 § 4942.

1 accountants advised the Foundation that it once again was at risk of failing to spend its minimum
2 distributable amount—now by \$1.1 million, an even larger amount than in the prior fiscal year. Mr. Burke
3 reasonably believed that the Foundation’s failure to make sufficient grants violated the Declaration of
4 Trust’s requirement that the Trustees promote the Foundation’s educational purpose, as well as the
5 requirement in Paragraph Eighth, sections one and four that the Trustees “apply at least sixty per cent. (60
6 %) of each year's net income to the trust purposes during that year” exclusive of any money placed into a
7 “special Reserve Fund.”

8 37. In a telephone conference in August 2021 among Mr. Burke, the Foundation’s accountants
9 and members of the Foundation’s Finance Committee, the Foundation’s accountants advised that directing
10 funds to the DAF created risks for the Foundation. After this telephone conference, Mr. Burke spoke with
11 Dr. Pisano and once again questioned whether the contribution of funds to the Foundation’s DAF
12 complied with the Foundation’s Declaration of Trust and the Trustees’ roles as fiduciaries of the
13 Foundation. Mr. Burke then wrote to the Executive Committee urging the Board to reconsider certain
14 grants they had not approved during the fiscal year and provided a list of all such proposed
15 grants. However, the Board refused to reconsider the grants, ignored Mr. Burke’s concerns, and again
16 directed funds to its DAF without distributing any money for the benefit of the working people of Los
17 Angeles as required by the Foundation’s Declaration of Trust.

18 **H. The Board Terminates Mr. Burke in Retaliation for Disclosing and Refusing to**
19 **Participate in Conduct He Reasonably Believed to Be Unlawful**

20 38. In August 2021, Dr. Pisano tasked Gil Ray, a member of the Board’s Executive
21 Committee, to determine the documents appropriate for the Board’s review for the September Board
22 meeting and Mr. Ray directed Mr. Burke to provide a collection of nineteen documents (the “September
23 Book”) in advance of the Board’s September 2021 meeting. Around August 26, Mr. Burke provided The
24 September Book to the Board members by posting them on Diligent, the Haynes Foundation’s online
25 service. These materials included seven documents that Mr. Burke had written at the request of Dr.
26 Pisano and Mr. Ray, and these documents raised concerns about whether the Haynes Foundation’s change
27 in purpose violated its Declaration of Trust and the Trustees’ own fiduciary duties.

28 39. On September 9, 2021, the Board of Trustees of the Foundation convened for its regular

1 Fall Board meeting. A principal item on the agenda was a continuing discussion of a change in the
2 purpose of the Haynes Foundation. Mr. Burke, his assistant Denia Camacho, and one Board member—
3 Dr. Pisano—attended the meeting in person in the Haynes Foundation’s offices while the other eight
4 Board members attended by video conference. Near the conclusion of the general session, the Trustees
5 took a major step toward changing the Haynes Foundation’s purpose by suspending the Haynes
6 Foundation’s principal grant-making program for Major Research Grants—an item that was not even on
7 the meeting agenda. While Dr. Mazmanian was discussing his efforts to change the Haynes Foundation’s
8 purpose, Dr. Mazmanian unexpectedly stated that he could not work with Mr. Burke any longer. Board
9 member Enrique Hernandez immediately raised his hand and moved the Board to an executive session.

10 40. The Board then excused Mr. Burke and Ms. Camacho and met in executive session. After
11 the executive session, Dr. Pisano met privately with Mr. Burke. She was visibly upset and was barely able
12 to communicate to Mr. Burke that his employment was terminated, effective immediately. She gave no
13 reason for the termination.

14 **I. The Foundation Provides Shifting Rationales for Mr. Burke’s Termination and**
15 **Admits That It Fired Mr. Burke In Response to His Whistleblowing**

16 41. On September 17, the Board sent Mr. Burke a letter praising his work, stating that his
17 termination was “effective September 22, 2021,” and explaining that “the Board has determined that the
18 Foundation would benefit from new leadership at this time.” This was the first purported reason that
19 anyone at the Haynes Foundation had offered for Mr. Burke’s termination.

20 42. On January 10, 2022, the Haynes Foundation offered a new explanation for its decision to
21 fire Mr. Burke four months earlier. Incredibly, the Haynes Foundation *admitted* that it fired Mr. Burke in
22 response to his “accusations about the Board and its individual Trustees.” The Haynes Foundation further
23 admitted that it terminated Mr. Burke based in large part to his “objections” to the Haynes Foundation’s
24 abandonment of its educational purpose “which [Mr. Burke] repeatedly claimed was inconsistent with the
25 Foundation’s Declaration”; because Mr. Burke “repeatedly accused certain Trustees of self-dealing and/or
26 suggested that their involvement in the [plan to unlawfully change the Foundation’s purpose] presented
27 conflicts of interest”; and because Mr. Burke “insinuate[ed] that the Foundation’s funding of a DAF was
28 somehow not permissible.”

J. The Foundation Fails to Pay Mr. Burke His Final Paycheck, Vacation Days, or Retirement Contributions

43. The Foundation never paid Mr. Burke his salary for the period from September 16, 2021, through the effective date of his termination on September 22, 2021.

44. At the time of his wrongful termination, Mr. Burke had accrued 30 vacation days. The Haynes Foundation never paid Mr. Burke for his unused vacation days, the value of which exceeded \$10,000.

45. At the time of his wrongful termination, Mr. Burke's salary included an annual contribution by the Foundation to a SEP IRA of 16% of his base salary, equal to \$35,520, payable at the end of the fiscal year ended August 31, 2021, with an additional *pro rata* amount of such contribution owed to Mr. Burke for his employment during a portion of the 2022 fiscal year from September 1, 2021, through his wrongful termination effective September 22, 2021. The Haynes Foundation never paid to Mr. Burke the value of his SEP IRA contributions for either the 2021 or 2022 fiscal years.

46. Defendants Mazmanian, Kramer, Pisano, and Suro were both personally involved in the decision not to pay Mr. Burke for his final week of salary, accrued vacation, or SEP IRA contributions, and sufficiently participated in the Foundation's decisions that they contributed to and thus caused the non-payment of these funds. Among other things, the Trustees assumed direct control over the Foundation's operations after firing Mr. Burke because there were no other staff remaining except for Ms. Camacho, who had no authority over payroll matters. Even prior to Mr. Burke's termination, no check exceeding \$10,000 could be issued without the signature of a Trustee. The money owed to Mr. Burke exceeds \$10,000. On information and belief, all Defendant Trustees were informed of the decision not to pay Mr. Burke, participated in the decision, and acquiesced thereto.

K. The Foundation Refuses to Timely Provide Mr. Burke's Personnel and Payroll Records

47. On November 9, 2021, Mr. Burke sent a written request to the Haynes Foundation for his personnel file and payroll records.

48. On December 8, 2021, the Haynes Foundation produced seven pages of documents comprising a small portion of Mr. Burke's personnel file from his more than fourteen years of service.

1 The Haynes Foundation has never provided the remainder of Mr. Burke's personnel file.

2 49. The Haynes Foundation produced no payroll records until February 2, 2022.

3 50. Defendants Mazmanian, Kramer, Pisano, and Suro were both personally involved in the
4 decision not to timely produce Mr. Burke's payroll records and sufficiently participated in the
5 Foundation's decision that they contributed to and thus caused the failure to timely provide these records.
6 Among other things, the Trustees assumed direct control over the Foundation's operations after firing Mr.
7 Burke because there were no other staff remaining except for Ms. Camacho, who had no authority over
8 the dissemination of payroll records. On information and belief, all Defendant Trustees were informed of
9 the decision not to timely provide Mr. Burke his payroll records, participated in the decision, and
10 acquiesced thereto.

11 **CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

13 **RETALITION**

14 **(Labor Code § 1102.5(b))**

15 **(Plaintiff Against All Defendants)**

16 51. Plaintiff realleges and incorporates by reference each and every allegation contained in the
17 foregoing paragraphs as though fully set forth herein.

18 52. At all relevant times, Defendants Haynes Foundation was Plaintiff's employer.

19 53. Plaintiff engaged in protected activity by disclosing information that Plaintiff had
20 reasonable cause to believe disclosed a violation of state or federal statute, local, state, or federal rule or
21 regulation to people with authority over Plaintiff and/or authority to investigate, discover, and/or correct
22 the violation and/or noncompliance. In addition, Defendants believed that Plaintiff disclosed or would
23 disclose information that Plaintiff had reasonable cause to believe disclosed a violation of state or federal
24 statute, local, state, or federal rule or regulation to people with authority over Plaintiff and/or authority to
25 investigate, discover, and/or correct the violation and/or noncompliance.

26 54. Defendants retaliated against Plaintiff for engaging in these protected activities.

27 55. Plaintiff's protected activities were a contributing factor in Defendants' illegal and
28 retaliatory conduct against Plaintiff.

56. Defendants' retaliation was a substantial factor in causing Plaintiff harm. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered, and continues to suffer, monetary and economic harm. Plaintiff has also suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, as well as emotional pain and suffering. Plaintiff is thereby entitled to compensatory damages including general and special damages in amounts to be proven at trial.

57. In doing the foregoing wrongful acts, Defendants, and each of them, acted with conscious disregard of Plaintiff's rights. Said Defendants' conduct was willful, wanton, malicious, and oppressive, thereby justifying an award of exemplary and punitive damages against each Defendant to punish the wrongful conduct alleged herein and to deter such conduct in the future.

SECOND CAUSE OF ACTION

RETALITION

(Labor Code § 1102.5(c))

(Plaintiff Against All Defendants)

58. Plaintiff realleges and incorporates by reference each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

59. At all relevant times, Defendants Haynes Foundation was Plaintiff's employer.

60. Plaintiff engaged in protected activity by refusing to participate in activities that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

61. Defendants retaliated against Plaintiff for engaging in these protected activities.

62. Plaintiff's protected activities were a contributing factor in Defendants' illegal and retaliatory conduct against Plaintiff.

63. Defendants' retaliation was a substantial factor in causing Plaintiff harm. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered, and continues to suffer, monetary and economic harm. Plaintiff has also suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, as well as emotional pain and suffering. Plaintiff is thereby entitled to

1 compensatory damages including general and special damages in amounts to be proven at trial.

2 64. In doing the foregoing wrongful acts, Defendants, and each of them, acted with conscious
3 disregard of Plaintiff's rights. Said Defendants' conduct was willful, wanton, malicious, and oppressive,
4 thereby justifying an award of exemplary and punitive damages against each Defendant to punish the
5 wrongful conduct alleged herein and to deter such conduct in the future.

6 **THIRD CAUSE OF ACTION**

7 **RETALIATION IN VIOLATION OF PUBLIC POLICY**

8 **(Plaintiff Against Defendant Haynes Foundation)**

9 65. Plaintiff realleges and incorporates by reference each and every allegation contained in the
10 foregoing paragraphs as though fully set forth herein.

11 66. At all relevant times, Defendants Haynes Foundation was Plaintiff's employer.

12 67. Plaintiff was terminated because he reported unlawful and unethical conduct by the
13 Haynes Foundation's Trustees and agents, and he refused to engage in unlawful activity.

14 68. Plaintiff's termination violated the public policies of the State of California as expressed
15 in, *inter alia*, the California Constitution and Labor Code § 1102.5. It is against California public policy
16 to terminate an employee for engaging in protected activity, including disclosing information that the
17 employee reasonably believes is unlawful, believing that the employee will disclose information that the
18 employee reasonably believes is unlawful, and refusing to participate in unlawful activity.

19 69. Defendants' retaliation was a substantial factor in causing Plaintiff harm. As a direct and
20 proximate result of Defendants' conduct, Plaintiff has suffered, and continues to suffer, monetary and
21 economic harm. Plaintiff has also suffered, and continues to suffer, severe mental anguish and emotional
22 distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of
23 self-esteem and self-confidence, as well as emotional pain and suffering. Plaintiff is thereby entitled to
24 compensatory damages including general and special damages in amounts to be proven at trial.

25 70. In doing the foregoing wrongful acts, Defendant acted with conscious disregard of
26 Plaintiff's rights. Said Defendant's conduct was willful, wanton, malicious, and oppressive, thereby
27 justifying an award of exemplary and punitive damages against Defendant to punish the wrongful conduct
28 alleged herein and to deter such conduct in the future.

1 **FOURTH CAUSE OF ACTION**

2 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

3 **(Plaintiff Against Defendant Haynes Foundation)**

4 71. Plaintiff realleges and incorporates by reference each and every allegation contained in the
5 foregoing paragraphs as though fully set forth herein.

6 72. At all relevant times, Defendant Haynes Foundation was Plaintiff's employer.

7 73. Plaintiff substantially performed his job duties and/or Plaintiff's performance was excused
8 and/or prevented.

9 74. Defendant prevented Plaintiff from receiving the benefits under his employment contract
10 by wrongfully terminating him and withholding the value of Plaintiff's final paycheck, accrued vacation
11 time, and contributions to his SEP IRA.

12 75. By doing so, Defendant did not act fairly and in good faith.

13 76. Plaintiff was harmed by Defendant's conduct.

14 77. In doing the foregoing wrongful acts, Defendant acted with conscious disregard of
15 Plaintiff's rights. Defendant's conduct was willful, wanton, malicious, and oppressive, thereby justifying
16 an award of exemplary and punitive damages against Defendant to punish the wrongful conduct alleged
17 herein and to deter such conduct in the future.

18 **FIFTH CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE §§§ 201(a), 203, 227.3, 558.1**

20 **(Plaintiff Against All Defendants)**

21 78. Plaintiff realleges and incorporates by reference each and every allegation contained in the
22 foregoing paragraphs as though fully set forth herein.

23 79. At all relevant times, Defendant Haynes Foundation was Plaintiff's employer.

24 80. At the time of his termination, Plaintiff was owed his salary for September 16, 2021,
25 through September 22, 2021, had accrued unused vacation time, and was owed his contributions to his
26 SEP IRA.

27 81. Defendant has not paid Plaintiff his salary for September 16, 2021, through September 22,
28 2021, the value of his accrued unused vacation time, or his contributions to his SEP IRA.

82. Defendant's failure to pay Plaintiff his salary for September 16, 2021, through September 22, 2021, the value of his accrued unused vacation time, and contributions to his SEP IRA is, and has been, willful.

83. Defendants Mazmanian, Kramer, Pisano, and Suro were both personally involved in the willful decision not to pay Mr. Burke for his final week of salary, accrued vacation, or SEP IRA contributions, and sufficiently participated in the Foundation's decisions that they contributed to and thus caused the non-payment of these funds. On information and belief, all Defendant Trustees were informed of the decision not to pay Mr. Burke, participated in the decision, and acquiesced thereto.

84. Plaintiff is entitled to compensatory and statutory damages, interest, and penalties including under Labor Code § 203(a).

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226(c), 558.1
(Plaintiff Against All Defendants)

85. Plaintiff realleges and incorporates by reference each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

86. At all relevant times, Defendant Haynes Foundation was Plaintiff's employer.

87. Plaintiff made a written request to Defendant Haynes Foundation on November 9, 2021, to receive a copy of his payroll records.

88. Defendant produced no payroll records until February 2, 2022.

89. Defendants Mazmanian, Kramer, Pisano, and Suro were both personally involved in the decision not to timely produce Mr. Burke's payroll records and sufficiently participated in the Foundation's decisions that they contributed to and thus caused the failure to timely provide these records. On information and belief, all Defendant Trustees were informed of the decision not to timely provide Mr. Burke his payroll records, participated in the decision, and acquiesced thereto.

90. Plaintiff is entitled to statutory damages under Labor Code § 226(f).

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SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 1198.5
(Plaintiff Against Defendant Haynes Foundation)

91. Plaintiff realleges and incorporates by reference each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

92. At all relevant times, Defendant Haynes Foundation was Plaintiff's employer.

93. Plaintiff made a written request to Defendant Haynes Foundation on November 9, 2021, to receive a copy of his personnel file.

94. Defendant has never provided, or permitted Plaintiff to copy or inspect, a complete copy of his personnel file.

95. Plaintiff is entitled to statutory damages under Labor Code § 1198.5(k), injunctive relief, and reasonable attorney's fees.

EIGHTH CAUSE OF ACTION
REPRESENTATIVE ACTION FOR CIVIL PENALTIES, LABOR CODE §§ 2698-2699.5
(Plaintiff Against Defendant Haynes Foundation)

96. Plaintiff realleges and incorporates by reference each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

97. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code § 2699(c), and a proper representative to bring a civil action on behalf of himself pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff was employed by Defendant Haynes Foundation and the alleged violations of the California Labor Code were committed against Plaintiff.

98. The California Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.* ("PAGA"), provides that "[n]otwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency . . . for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees" Lab. Code § 2699(a).

99. Plaintiff alleges, on behalf of himself, that Defendant Haynes Foundation has violated, among other statutes and regulations, California Labor Code §§ 201, 203, 227.3, and 1102.5.

100. Pursuant to Labor Code § 2699(a), Plaintiff seeks to recover civil penalties, as otherwise provided by statute, for which Defendant Haynes Foundation is liable as a result of the foregoing violations of the Labor Code sections in an amount to be proven at trial, including, but not limited to, penalties under Labor Code §§ 2699(f). Plaintiff is also entitled to an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1).

101. Plaintiff is in the process of exhausting his administrative remedies as required by Labor Code § 2699.3(a). Plaintiff has provided written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant The Haynes foundation as to the claims alleged herein, namely, the specific provisions of the California Labor Code, among other state statutes and regulations, that Defendant the Haynes Foundation is alleged to have violated, as well as the facts and theories supporting these violations. When Plaintiff’s administrative remedies are exhausted, Plaintiff will amend the Complaint.

PRAYER FOR RELIEF

1. For special and general damages;
2. For past and future lost income and benefits, including the tax gross-up of these amounts;
3. For emotional distress damages;
4. For an award of statutory and civil penalties pursuant to California Labor Code §§ 203(a), 226(f), 1198.5(k), and 2699;
5. For costs of suit incurred herein;
6. For reasonable attorneys' fees pursuant to Labor Code §§ 1102.5, 2669(g)(1) and 1198.5(l), Code of Civil Procedure § 1021.5, and all other applicable statutes;
7. For declaratory and injunctive relief;
8. For prejudgment and post-judgment interest as available by law; and
9. For such other and further relief as this Court may deem just and proper.

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Dated: February 4, 2022

HADSELL STORMER RENICK & DAI LLP

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COMPLAINT FOR DAMAGES