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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA- SANTA ANA DIVISION

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TOM CONKLIN and ABRAHAM
SANTOS,

CASE NO.

11

Plaintiffs,

12

vs.

**COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

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COUNTY OF ORANGE, a public
entity; ANTHONY
RACKAUCKAS, an individual;
15 EBRAHIM BAYTIEH, an
individual; DAN WAGNER, an
16 individual; MIKE LUBINSKI, an
individual; CAMERON TALLEY,
17 an individual; BRAD TANNER, an
individual; DINA MAUGER, an
18 individual; LOU GUTIERREZ, an
individual; BILLY HESTER, an
19 individual; NARAM
CHANTANASOMBUTE, An
20 individual; ROY ELLISON, an
individual, ERIKA TRINIDAD, an
21 individual, and DOES 1 Through 20,
22 inclusive,

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Defendants.

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COMES NOW, Plaintiffs, TOM CONKLIN and ABRAHAM SANTOS, who make
27 this Complaint for Damages and Demand for Jury Trial as follows:

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COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

JURISDICTIONAL ALLEGATIONS

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2 1. As to the federal law claims contained in this Complaint, the original
3 jurisdiction of the United States District Court is invoked pursuant to 42 U.S.C. §1331,
4 in that these federal claims involve federal questions with amounts in controversy over
5 \$75,000.

6 2. As to the state law claims contained in this Complaint, the supplemental
7 jurisdiction of the United State District Court is invoked pursuant to 28 U.S.C. §1367, in that
8 the state law claims and the federal law claims have common questions of law and fact.

9 3. Venue of this action in the Central District of California—Santa Ana
10 Division— is sought pursuant to 28 U.S.C. §1391, in that both the state and federal law
11 claims arose in the County of Orange, State of California.

GENERAL ALLEGATIONS

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13 4. Plaintiff, TOM CONKLIN, (hereafter CONKLIN) is, and at all times
14 herein mentioned was, a citizen of the State of California. At all times herein mentioned,
15 Plaintiff was and is a law enforcement investigator and California peace officer employed by
16 the District Attorney’s Office for the County of Orange (OCDA), which is a law
17 enforcement agent of Defendant COUNTY OF ORANGE.

18 5. Plaintiff, ABRAHAM SANTOS (hereafter SANTOS), is, and at all times
19 herein mentioned was, either a resident of both California and Colorado. Up until his
20 termination on September 15, 2017, Plaintiff was a law enforcement investigator and
21 California peace officer employed by the District Attorney’s Office for the County of Orange
22 (OCDA), which is a law enforcement agent of Defendant COUNTY OF ORANGE.

23 6. Further, at all times herein mentioned, Plaintiffs were “policymakers”, not in
24 management, and not in confidential management positions during the course and scope of
25 their employment in the District Attorney’s Office of Defendant, COUNTY OF ORANGE.

26 7. Further, at all times herein mentioned in connection with some or all of the
27 investigations detailed below, Plaintiffs CONKLIN and SANTOS acted as
28 “whistleblowers”, which were not part of his official duties. Their “whistleblowing”

1 activities involve them standing up for the constitutional and statutory rights of victims of
2 unlawful activities and their careers have been destroyed as a proximate result of the adverse
3 employment actions they have sustained, and will continue to sustain.

4 8. Defendant, COUNTY OF ORANGE (hereafter OC) is, and at all times herein
5 mentioned was, a public governmental entity within the State of California. According to
6 established state law, the County of Orange District Attorney's Office cannot be sued as a
7 separate agency with Defendant OC. All references to said District Attorney's Office will be
8 set forth as 'OCDA' in this Complaint.

9 9. Defendant, ANTHONY RACKAUCKAS (hereafter RACKAUCKAS) is, and
10 at all times herein mentioned was, a citizen of the State of California. Further, at all times
11 herein mentioned, Defendant RACKAUCKAS was, and still is, the elected District Attorney
12 for the Orange County District Attorney's Office, an agency within the jurisdiction of
13 Defendant COUNTY OF ORANGE.

14 10. Defendants, EBRAHIM BAYTIEH (hereafter BAYTIEH), DAN WAGNER
15 (hereafter WAGNER), MIKE LUBINSKI (hereafter LUBINSKI), and CAMERON
16 TALLEY (hereafter TALLEY), at all times herein mentioned, are and/or were senior deputy
17 district attorneys in the Orange County District Attorney's Office, an agency within the
18 jurisdiction of Defendant OC.

19 11. Defendants, BRAD TANNER (hereafter TANNER), DINA MAUGHER
20 (hereafter MAUGHER), LOU GUTIERREZ (hereafter GUTIERREZ), NARAN
21 CHANTANASOIMBUTE (hereafter NARAN), and ROY ELLISON (hereafter ELLISON)
22 at all times herein mentioned, are and/or were law enforcement investigators and California
23 peace officers employed by the District Attorney's Office for the County of Orange (OCDA),
24 which is a law enforcement agent of Defendant COUNTY OF ORANGE. Defendant
25 ERIKA TRINIDAD (hereafter TRINIDAD) was an investigative assistant with the OCDA's
26 office.

27 12. Plaintiff is not aware of the true names and/or capacities of those individuals
28 or entities sued herein as DOES 1 through 20, and therefore sues these defendants by their

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

1 fictitious names. Plaintiff will amend this complaint when the true names and/or capacities
2 of said DOE defendants are finally ascertained.

3 13. Plaintiff CONKLIN has had a distinguished career in law enforcement.
4 Between 1990 and 2008, CONKLIN was a peace officer with the City of Fullerton Police
5 Department, including stints as an investigator in homicide—sex crimes and as a patrol
6 sergeant. Since June, 2008 to the present date, CONKLIN has served as an investigator with
7 peace officer status in the OCDA. Plaintiff SANTOS had started what would have been a
8 distinguished career in law enforcement, having worked as a peace officer for the City of Los
9 Angeles Police Department and the City of Whittier Police Department before joining the
10 OCDA as an investigator and peace officer in 2015.

11 14. This Complaint involves adverse employment actions suffered by Plaintiff
12 CONKLIN as a result of his investigative work and public policy complaints for the OCDA/
13 Defendant OC on three particular matters: (a) Susan White Investigation; (b) Daniel
14 Gidanian investigation; and (c) Todd Spitzer investigation. Plaintiff CONKLIN's
15 participation in the OCDA investigation of these three cases have separate time frames. In
16 the Stephenson Choi Kim matter, Plaintiff's participation commenced in or about May, 2011
17 and continued up to and including the recent adverse employment actions more specifically
18 described below. In the Daniel Gidanian matter, Plaintiff's participation started in
19 November, 2016 and continued up to and including April, 2017. In the Todd Spitzer matter,
20 Plaintiff's participation started in or about November 2016 and continued until he was
21 punished by being placed on administrative leave with pay since on or about July 4, 2017.
22 Facts supporting Plaintiff's claim as to each of these three investigations will be set forth
23 below:

24 15. This Complaint also involves adverse employment actions suffered by Plaintiff
25 SANTOS as a result of his investigative work and public policy complaints for the OCDA/
26 Defendant OC on two particular matters: (a) Daniel Gidanian investigation; and, (b) Joe Felz
27 investigation.

28 16. This Complaint also involves adverse employment actions suffered by

1 Plaintiff SANTOS on false claims that he sexually harassed a female investigative assistant.

2 **SUSAN WHITE INVESTIGATION— RELATING TO PLAINTIFF**

3 **CONKLIN ONLY**

4 17. Initially, in the Stephenson Choi Kim capital case, Investigator Conklin had
5 been assigned to investigate whether or not former Cypress Police Department investigator
6 Susan White had committed perjury at the Choi Kim trial. Choi Kim was charged with
7 several other suspects in a premeditated shooting which took place at the Fifth Wave Café in
8 Cypress, California, in which one victim was killed and several others were wounded. On
9 March 24, 2011, Choi Kim was found guilty on all charges, including one count of first
10 degree murder, six counts of premeditated attempted murder, one count of street terrorism,
11 and several special allegations with sentence enhancements. On April 27, 2012, Choi Kim
12 was sentenced to life without the possibility of parole plus 255 years in prison. On February
13 21, 2014, the Fourth Appellate District, Division Three, affirmed Choi Kim’s judgment and
14 sentence. Choi Kim has continued his appeals.

15 18. At the Choi Kim trial, former Cypress Police Department investigator Susan
16 White (then employed by the Los Angeles County District Attorney as an investigator)
17 testified that she had interviewed several eyewitnesses to the crime, and that these
18 eyewitnesses had positively identified Choi Kim and other suspects as being present at the
19 Fifth Wave Café at the time of the crime. At the trial, Susan White further testified that the
20 digital audio recordings and photographic lineups shown to the percipient witnesses could
21 not be located (and had not been turned over to the defense counsel representing Choi Kim),
22 and that the only record she had of the pretrial identifications were her written police reports
23 of what had transpired. The eyewitnesses, whom Susan White claimed in her police reports
24 had all made positive identifications of Choi Kim and other suspects, testified that they had
25 not in fact made those pretrial identifications at the Choi Kim trial. The OCDA prosecution,
26 led by Defendant DDA TALLEY(now retired), did not put Susan White on the stand at the
27 trial; however, the defense counsel (Leonard Levine and Michael Chaney) did call White as
28 an adverse witness because her police reports were inconsistent with the eyewitness

1 testimony. Once on the witness stand as a defense witness, Susan White had to admit that
2 her police reports were incorrect and that the eyewitnesses had not made positive
3 identifications of Choi Kim and/or the other suspects.

4 19. When, at the trial, Susan White admitted that her police reports were
5 misrepresented, the defense counsel asked Orange County Superior Court Judge John Conley
6 for a mistrial, claiming that Susan White had committed perjury. Judge Conley ruled instead
7 that White had not committed perjury; more specifically, he ruled that White had conducted a
8 sloppy investigation, that she had written police reports that were highly inaccurate, and had
9 testified to those inaccuracies. Judge Conley denied the mistrial motion.

10 20. After the trial, the defense counsel for Choi Kim wrote a letter to the OCDA,
11 contending that Susan White had written false police reports, had forged pretrial lineup
12 identification, and had committed perjury at the trial. Based on this letter from defense
13 counsel, the OCDA assigned Plaintiff CONKLIN to review the allegations and report on the
14 same.

15 21. By May 23, 2011, Plaintiff's investigation into the Susan White matter was
16 completed. Plaintiff had determined in his investigation that defense counsel was correct in
17 their assessment that Susan White had written false police reports, had forged pretrial lineup
18 identification, and had committed perjury at the trial. Plaintiff also located the digital audio
19 recordings of the pretrial interviews of eyewitnesses and photographic lineups. Plaintiff
20 informed Defendant DDA TALLEY that it was his assessment that Susan White had
21 participated in a spoilation of evidence, that she had falsely manufactured her police reports,
22 and that she had committed perjury on the witness stand. On or about June 7, 2011, he
23 conveyed this information to Defendant DDA TALLEY well before the sentencing
24 proceeding when the two happened to run into each other in the OCDA parking structure.
25 Defendant DDA Talley told Plaintiff that "it would be preferable if you said your
26 investigation was not completed until after the date of the sentencing." In other words,
27 Defendant DDA TALLEY did not want to advise the defense about Plaintiff's investigation
28 into the Susan White matter, since he was concerned that it might result in a new trial for

1 Choi Kim. Defendant DDA TALLEY did not in fact advise defense counsel about those
2 results because it might have helped Choi Kim. In failing to so advise defense counsel about
3 the conclusions of Plaintiff's investigation, Defendant DDA TALLEY was violating Choi
4 Kim's rights under the Sixth Amendment to the United States Constitution as well as Choi
5 Kim's discovery rights under *Brady v. Maryland* and his discovery rights under California
6 state law.

7 22. On June 24, 2011, Plaintiff's completed investigation into the Susan White
8 matter was assigned to DDA Aleta Bryant of the OCDA for a review of what criminal
9 charges, if any, would be brought against Susan White. DDA Bryant and Senior Assistant
10 District Attorney/ Defendant DDA LUBINSKI were briefed by Plaintiff and Plaintiff's then
11 direct supervisor, Anthony Sosnowski. Plaintiff also briefed Assistant District Attorney/
12 Defendant DDA WAGNER (head of the OCDA Homicide unit), about the Susan White
13 investigation results. Defendant DDA Talley was also provided with a disk of Plaintiff's
14 entire investigation, including his interview of Susan White, the digital audio recordings and
15 the transcripts of the eyewitnesses' pretrial statements.

16 23. On July 5, 2011, Plaintiff was notified that the OCDA had never received the
17 recorded pretrial interviews of witnesses Byum Lee and Young Kim which Plaintiff had
18 uncovered during his investigation.

19 24. The next day, July 6, 2011, DDA Bryant indicated that Susan White would not
20 be prosecuted for her crime(s), since Bryant believed the OCDA could not prove a case
21 against her beyond a reasonable doubt. On that same day, Defendant DDA TALLEY
22 contacted Plaintiff in person and yelled at him for being "a de facto investigator for the
23 defense and doing the defense's dirty work". Defendant DDA TALLEY also told Plaintiff:
24 (1) "why didn't you stop your investigation once you located the new recordings"; and, (2)
25 "why didn't you wait until after the sentencing—now I have to disclose suspect descriptions
26 to the defense." Defendant DDA TALLEY in essence asked Plaintiff to lie about what he
27 had found. Plaintiff's response was "it would have been unethical for me to wait."
28 Defendant DDA TALLEY persisted in berating Plaintiff, asking him "why didn't you

1 investigate every case that Susan White had worked on and not just the Choi Kim case”.
2 Defendant DDA TALLEY said, “I was not advised of the scope of your investigation”.
3 Plaintiff, however, reminded him of the parking structure conversation of about one month
4 before, when Defendant DDA TALLEY had instructed Plaintiff not to complete his
5 investigation until after Choi Kim had been sentenced.

6 25. On July 20, 2011, Defendant DDA WAGNER told Plaintiff’s direct supervisor,
7 Anthony Sosnowski, that he wanted to meet with Plaintiff about the Susan White
8 investigation. Plaintiff then emailed Wagner to ask what documentation he wanted brought
9 to their meeting. Two days later, Defendant DDA WAGNER emailed back, stating that he
10 could not meet Plaintiff because he was busy on another matter. In the next week, despite
11 Plaintiff notifying Wagner about his availability to speak about the investigation, Defendant
12 DDA WAGNER failed to or refused to make himself available for an interview.

13 26. For the next four plus years, Plaintiff did not have any conversations with the
14 Defendant DDA’s on the OCDA homicide panel about his Susan White investigation.
15 Plaintiff instead assumed that his completed investigation, along with all the digital audio
16 recordings of witness statements and other records in the Susan White matter, had been
17 turned over to defense counsel in the Choi Kim case pursuant to the obligations imposed on
18 the prosecution in the Brady v. Maryland case and its progeny.

19 27. In November, 2015, however, Plaintiff reviewed an article in the OC
20 Weekly stating that Choi Kim had filed an “appeal for a new trial”. The article did not
21 make any mention of his investigation into the Susan White matter; therefore, Plaintiff
22 became immediately suspicious that the OCDA had not turned over the completed
23 investigation to the defense counsel in the Choi case as he assumed. To Plaintiff, the timing
24 of this possible discovery was suspicious, since the OCDA was then under siege due to the
25 “informant scandal” generated by law enforcement’s jailhouse informant program. He was
26 doubly suspicious because the person handling the jail informant program for the OCDA was
27 none other than Defendant DDA WAGNER— the same attorney whom he now thought may
28 have made the decision not to disclose Plaintiff’s Susan White investigation to the defense

1 counsel in the Choi Kim case.

2 28. Upon reading the OC Weekly article noted above, Plaintiff believed that both
3 Defendants DDA TALLEY and DDA WAGNER were tarnished. Therefore, Plaintiff, on or
4 about December 2, 2015, contacted Assistant District Attorney/ Defendant DDA BAYTIEH
5 told him of his concerns that the investigation results had not been disclosed to the defense.
6 Plaintiff gave Defendant DDA BAYTIEH another copy of his investigation file along with a
7 time line.

8 29. On or about January 25, 2016, Defendant DDA WAGNER contacted
9 OCDA Homicide Investigator Steve Walker, asked him to respond to the discovery room,
10 and to look for discovery in the Choi Kim case. Walker did locate a CD of two Susan White
11 interviews in the discovery room which were left there in July, 2011; *however, Plaintiff's*
12 *investigation disk into the Susan White matter was missing.*

13 30. On or about January 29, 2016, Defendant DDA TALLEY sent Plaintiff
14 an email, asking about the specifics of his investigation into the Susan White matter and the
15 results thereof. *This was clearly a "CYA" email, since Talley's name was all over the*
16 *Susan White investigation when he was prosecuting Choi Kim in the July, 2011 time period.*
17 Nevertheless, Plaintiff sent him a reply email, explaining once again the investigation and the
18 results thereof.

19 31. By March 1, 2017, after appearing before the Orange County "Watchdog
20 Grand Jury, and after receiving some discipline by the OCDA office as described below,
21 Plaintiff determined that the highest levels of management at the office had not seen to it that
22 his Susan White investigation was sent to defense counsel in the Choi Kim case despite
23 promising to do so. Plaintiff knew, as a competent and skilled investigator with the
24 OCDA, that exculpatory evidence in a criminal case was required under both federal and
25 state constitutional and statutory standards to be turned over to a criminal defendant.

26 32. Therefore, on March 31, 2017, Plaintiff contacted defense attorney Michael
27 Chaney in the Choi Kim capital case to see if the Susan White investigation that he had
28 completed had been turned over the defense counsel. Defense counsel, Michael Chaney, said

1 he did not recognize Plaintiff name and, also, was not familiar with any investigation into the
2 Susan White matter. Also, Mr. Chaney further told Plaintiff that he did not realize that the
3 OCDA office had several pieces of exculpatory evidence contained in the White
4 investigation. Mr. Chaney asked Plaintiff to meet with him on April 7, 2017, and Conklin
5 agreed.

6 33. On April 7, 2017, Plaintiff did meet with defense counsel Michael Chaney. On
7 April 28, 2017, he also met with both defense counsel in the Choi Kim capital case—
8 Leonard Levine and Michael Chaney. He furnished both counsel with the narrative and time
9 line in his Susan White investigation.

10 34. After the meeting on April 28, 2017, it became clear to Plaintiff that the
11 OCDA's office at the highest levels made the decision to not disclose his Susan White
12 investigation to the defense counsel in the Choi Kim case in 2011 or thereafter. Having been
13 caught in the aforesaid constitutional and statutory violations, the OCDA, acting through
14 Defendant DDA WAGNER, in or about February, 2016, concocted a scheme to make it look
15 like the OCDA did nothing wrong and, instead, attempted to place the blame on defense
16 counsel's purported negligence. Defendant DDA WAGNER wrote a letter to defense
17 counsel along with the CD of two Susan White interviews that OCDA homicide investigator
18 Steve Walker had recently located in the discovery room. Defendant DDA WAGNER had
19 learned that, in July, 2011, the OCDA office had called defense counsel in the Choi Kim case
20 to notify them that discovery was waiting to be picked up at the OCDA office. The package
21 contained a CD with two witness interviews on it. In the letter, Defendant DDA WAGNER
22 alleged that the defense had never picked up the CD in July, 2011 when the discovery notice
23 was initially sent. *With the CD containing the two witness interviews, Wagner also slipped*
24 *in the CD disk of Plaintiff's completed investigation into the Susan White matter in an effort*
25 *to dupe the defense into believing that the CD of the Conklin investigation into Susan White*
26 *was also "discovered" to the defense in the July, 2011 time period.*

27 35. The fact that Plaintiff persisted in ensuring that the OCDA's office fulfilled its
28 constitutional and statutory obligations to provide exculpatory evidence to the defense in the

1 Choi Kim case ultimately caused him to be marginalized, harassed and subjected to adverse
2 actions by his attorney superiors at the highest levels of the OCDA office. Further, the fact
3 that Plaintiff required his attorney superiors to act both ethically and lawfully in connection
4 with a law enforcement investigation placed Plaintiff in the crosshairs of the Orange County
5 District Attorney, Defendant RACKAUCKAS. The persons named in this Complaint as
6 having managerial involvement in the Susan White investigation— Defendants DDA
7 TALLEY, WAGNERS, BAYTIEH, and LUBINSKI were all involved in a cover-up of
8 constitutional and statutory proportions, and they are all beholden to Defedant OCDA
9 RACKAUACKAS. Defendant OCDA RACKAUCKAS has micromanaged the OCDA’s
10 office since he was elected to the position. The culture, pattern, practice, and policy in the
11 OCDA’s office is one of punishing perceived disloyalty. Defendant OCDA
12 RACKAUCKAS transparently rewards his friends and punishes his enemies. The firing of
13 former District Attorney Supervisor Todd Spitzer, as well the job actions and terminations of
14 other dissident protectors of the law, has proven this point again and again.

15 36. The actions and comments of the aforementioned culpable individually-named
16 defendants, which together violated the constitutional and statutory obligations of the
17 prosecution towards the defendant in a capital murder case, occurred beyond the six-month
18 time period of *Government Code* §§911.2[a]. However, the repercussions to Plaintiff as a
19 result of the Susan White investigation in the form of retaliatory adverse employment actions
20 have occurred in 2017 and continue to occur in 2018.

21 37. Plaintiff, as a result of his free speech and “whistleblowing” activities in
22 connection with the Susan White investigation, Investigator Conklin came to be viewed at
23 the highest levels of the OCDA as not being a team player— which is about the worst
24 comment that can be made about an individual who has made law enforcement a career.
25 Every peace officer working the street or the jails knows he has to depend on his or her
26 partner, even when he or she does something unlawful. Law enforcement can depend on
27 Plaintiff so long as law enforcement follows the law. Plaintiff will not lie to protect a fellow
28 investigator or superior who has acted unlawfully. Plaintiff will not trample on a defendant’s

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1 constitutional and statutory rights because the culture of the OCDA office demands it. The
2 OCDA's participation in the topical jailhouse informant scandal, as well as the unjustified
3 prosecutions of Defendant RACKAUCKAS enemies, readily demonstrates that the hierarchy
4 of the OCDA office has been morally, ethically and legally bankrupt under his leadership.

5 **DANIEL GIDANIAN INVESTIGATION— RELATING TO BOTH**
6 **PLAINTIFFS CONKLIN AND SANTOS**

7 38. Daniel Gidanian is a dangerous person, a fact borne out by the commendable
8 investigation of Plaintiffs CONKLIN and his OCDA investigator- partner, Plaintiff
9 SANTOS.

10 39. In the Daniel Gidanian case, Plaintiffs CONKLIN and SANTOS were assigned
11 to investigate the defendant (Gidanian) who, in November-December 2016, was on trial for
12 violating a restraining order to stay away from the Orange County Superior Court (Harbor),
13 stalking a female neighbor and slashing her tires seven separate times. Plaintiffs CONKLIN
14 and SANTOS were assigned partners in this investigation. For example, in 2008, Gidanian
15 stalked the Honorable Derek Johnson, Orange County Superior Court judge, with a gun.
16 In November-December 2016, Gidanian was on trial for an alleged violation of a restraining
17 order to stay away from Harbor Court, for vandalism and stalking.

18 40. Plaintiffs enlisted the aid of Orange County Sheriff's Deputy Finley to monitor
19 any calls made by Gidanian while he was in custody. They soon learned from that call-
20 monitoring that Gidanian had asked his mother to get him a gun and ammunition prior to
21 being released on bail and being interviewed by probation officials. They also learned that
22 Gidanian's release date was March 1, 2017. Based on those additional concerns, Plaintiffs
23 had written search warrants to serve on Gidanian's parents and their property. On December
24 13, 2016, Plaintiffs served search warrants on Gidanian's home. During the ensuing search,
25 they discovered evidence that Gidanian was stalking over 30 different persons and, also, had
26 conducted internet research on illegal activities. *Some of Gidanian's stalking victims were*
27 *fellow peace officers.* Most significantly, based on what they had found, both Plaintiffs
28 believed that Gidanian was planning a "Sandy Hook elementary-type" shooting and suicide.

1 OC Deputy District Attorney Jeff Kirk, who was prosecuting Gidianian at the time, agreed
2 with the analysis of both Plaintiffs at the time.

3 41. At the time the above was happening, Plaintiff CONKLIN's direct supervisor
4 for the Special Prosecutions Unit in the OCDA to which he was assigned was Stan Berry. On
5 January 3, 2017, supervisor Berry had given Investigator Conklin an "outstanding" annual
6 performance review. However, towards the end of January, Stan Berry was replaced and
7 Plaintiff's CONKLIN direct supervisor became Defendant TANNER. Also, in the beginning
8 of February, 2017, Defendant MAUGER became the Commander of the Special
9 Prosecutions Unit in the District Attorney's Investigator Office. Defendant MAUGER
10 became Defendant TANNER's supervisor. Defendant MAUGER herself was supervised by
11 OCDA Assistant Chief Defendant GUTIERREZ.

12 42. Further, at the time the above was happening, Plaintiff SANTOS' direct
13 supervisor for the Special Prosecutions Unit in the OCDA to which he was assigned was
14 Stan Berry. On January 3, 2017, supervisor Berry had given Investigator Conklin an
15 "outstanding" annual performance review. However, towards the end of January, Stan Berry
16 was replaced and Plaintiff's CONKLIN direct supervisor became Defendant TANNER.
17 Also, in the beginning of February, 2017, Defendant MAUGER became the Commander of
18 the Special Prosecutions Unit in the District Attorney's Investigator Office. Defendant
19 MAUGER became Defendant TANNER's supervisor. Defendant MAUGER herself was
20 supervised by OCDA Assistant Chief Defendant GUTIERREZ.

21 43. On or about February 2, 2017, Plaintiffs asked their new direct supervisor
22 (Brad Tanner) and DDA Jeff Kirk for another investigator to aid them with the Gidianian
23 investigation. As noted, both Plaintiffs were convinced that all of the evidence pointed to
24 Gidianian being a clear and present danger to society and a threat to crime victims. Defendant
25 TANNER initially agreed that another investigator should be appointed for the purpose of
26 helping to interview the 30 or so victims who were being stalked by Gidianian, but indicated
27 he had to brief the new commander, Defendant MAUGER, on the issue first. Defendant
28 TANNER suggested to plaintiffs that he first advise Defendant MAUGER on what was

1 needed to further support the Gidianian investigation and why. Defendant TANNER further
2 suggested that Plaintiffs meet up with Defendant MAUGER later that day to brief her on the
3 particulars.

4 44. Later that day— February 2, 2017— Defendant TANNER emailed Plaintiff
5 CONKLIN about his time cards and failed to mention any meeting with Defendant
6 MAUGER on the Gidianian case as he had suggested. Plaintiff CONKLIN immediately
7 emailed him back and asked about the planned meeting with Defendant MAUGER on the
8 Gidianian matter. Shortly after that, Defendant TANNER called Conklin on his cell phone
9 and advised him: (1) “be careful what you wish for”; and, (2) “(Commander) Mauger took
10 the Gidianian case away from you *due to your light duty status.*” Defendant TANNER also
11 told Plaintiff CONKLIN that both he and his partner, Plaintiff SANTOS, had been removed
12 from the Gidianian investigation and that it was re-assigned to OCDA Investigator Fred
13 Nichols. While he was on the phone with Defendant TANNER, Investigator Conklin saw
14 DDA Jeff Kirk and flagged him down to tell him he had just been removed as the
15 investigator in the Gidianian case. DDA Kirk informed Plaintiff COLNKLIN that “I already
16 knew that” and that he had learned it from Assistant District Attorney/ Defendant DDA
17 BAYTIEH.

18 45. Plaintiff SANTOS was also told by Defendant TANNER that Defendant
19 MAUGER had taken the Gidianian case away from both he and Plaintiff CONKLIN because
20 of CONKLIN’s alleged placement on “light duty status” and the purported work restrictions
21 of that status. Plaintiff SANTOS told Defendant TANNER that he was not on “light duty
22 status” and would continue with the Gidianian investigation. Defendant TANNER scolded
23 him, saying “it’s not your place to tell me what to do and you and Conklin are both off the
24 Gidianian case.”

25 46. Defendant TANNER also told both Plaintiffs that the Gidianian case was being
26 reassigned to OCDA investigator, Fred Nichols. Defendant TANNER also instructed
27 Plaintiff CONKLIN to meet with Fred Nichols at the next day’s court appearance for
28 Gidianian.

1 47. Later that day— February 2, 2017— Plaintiff CONKLIN then contacted
2 Defendant DDA BAYTIEH by phone. BAYTIEH informed CONKLIN that Defendant
3 MAUGER had already called him and that he was aware of the situation. Defendant DDA
4 BAYTIEH repeated to Plaintiff CONKLIN what Defendant CONKLIN had told him— i.e.
5 that “you (and Santos) were taken off the Gidanian case because of your heavy caseload and
6 *your light duty status.*” Plaintiff CONKLIN complained that MAUGER was retaliating
7 against him, possibly because of his role in the Susan White investigation in the Choi Kim
8 case. Plaintiff CONKLIN requested that he (BAYTIEH) and Senior Assistant District
9 Attorney/ Defendant DDA LUBINSKI speak to the head of the District Attorney’s
10 Investigation Unit about “this discriminatory behavior”. Defendant BAYTIEH agreed to do
11 this “next week”; however, Defendant BAYTIEH never followed through on this promise to
12 Plaintiff CONKLIN.

13 48. On February 3, 2017, Plaintiffs went to Gidanian’s court hearing and met with
14 newly-assigned investigator Fred Nichols as they were instructed to do by Defendant
15 TANNER the day before. Plaintiff CONKLIN told Nichols that he was shocked that
16 Defendant MAUGER took the case away from he and Plaintiff SANTOS, especially since
17 Gidanian was due to get out of jail soon and would be readying himself to commit a
18 catastrophic crime to elementary school children. Investigator Nichols readily agreed with
19 Plaintiff CONKLIN that “there is no way they can take the case away from you” and “we
20 will have a problem in getting up to speed before it’s too late”.

21 49. On February 5, 2017, Plaintiff CONKLIN drafted a summary of the
22 Gidanian stalking case and added information that the case was taken away from him “for all
23 the wrong reasons”. The summary was emailed to Defendants DDA LUBINSKI and
24 Defendant DDA BAYTIEH. Plaintiff CONKLIN decided that he was going to continue to
25 work on the Gidanian case because the new investigators, Nichols and Rich Ayres, could not
26 possibly get up to speed in time.

27 50. On February 6, 2017, Plaintiffs met with ADA Kirk and, together, they came
28 up with a game plan regarding preventing Gidanian from acquiring guns and ammunition

1 from his mother. The game plan was to write search warrants on the parents' phones and
2 home. When Defendant TANNER stopped by their cubicles, Plaintiffs notified him that
3 they were still going to work on the case. Plaintiffs also told Defendant TANNER that they
4 had worked overtime on the weekend and were going to submit that overtime pay request.
5 Plaintiffs also told Defendant TANNER they would continue to work overtime on the
6 Gidianian case. Both also made it clear that the mission statement of the OCDA was "to
7 protect the public", and that their removal from the case led to potential victims not being
8 protected.

9 51. Later that day— on February 6, 2017— Defendant TANNER met with
10 Defendant MAUGER and told her that Plaintiffs were defying the order to hand over the
11 Gidianian case to fellow investigators Nichols and Ayres. After the meeting, Defendant
12 TANNER called CONKLIN and asked him for the summary that CONKLIN had prepared
13 on February 5, 2017, which, as noted above, had been emailed to Defendants DDA's
14 LUBINSKI and BAYTIEH. Plaintiff CONKLIN refused to hand over the summary,
15 indicating that "the summary is a complaint against both you (TANNER) and MAUGER for
16 retaliation and discrimination". Plaintiffs then continued to work overtime on the Gidianian
17 investigation. This overtime was later approved by Defendant TANNER.

18 52. On February 9, 2017, the chief of the OCDA Investigator's Office called
19 Plaintiff CONKLIN and said that he and OCDA Human Resources Representative Madai
20 Chavez wanted to meet with him the next day.

21 53. On February 10, 2017, Plaintiff CONKLIN met with OCDA HR representative
22 alone. The meeting was purportedly about Conklin's "light duty status". The next day,
23 Chavez convinced an Orange County physician to take Plaintiff CONKLIN off gun range
24 restriction.

25 54. On February 14, 2017, Plaintiff CONKLIN had a second meeting with
26 HR Representative Chavez. This meeting was about CONKLIN's "personnel complaint"
27 against the retaliatory and discriminatory actions taken against him by both Defendants
28 MAUGER and TANNER. In this meeting, Plaintiff CONKLIN told Chavez (1) "about the

1 corruptive practices” of the OCDA, including the OCDA’s handling of the Susan White
2 perjury investigation in the Stephenson Choi Kim capital case; and, (2) that the Gidianian
3 case was being taken away from he and Plaintiff SANTOS because of CONKLIN’s plan to
4 appear before the Orange County “Watchdog Agency— grand jury” in the near future. HR
5 Representative Chavez told Plaintiff CONKLIN that “I am 99% sure that the Gidianian case
6 will not be taken away from you” and “if it were taken away from you, it would be
7 discriminatory and unlawful.” Chavez claimed she would get approval from her boss to
8 ensure that the Gidianian case would not be taken away from Plaintiffs.

9 55. Later that same day— on February 14, 2017, Defendant LUBINSKI called
10 Plaintiff CONKLIN, and spoke about CONKLIN’s meeting with HR Manager Madai
11 Chavez. LUBINSKI stated “I heard the meeting with Chavez went great”. LUBINSKI also
12 told CONKLIN words to the effect of “Tony (Rackauckas) was very appreciative that you
13 kept it in house and did not bring your union representative to the meeting with her.”
14 LUBINSKI also discussed CONKLIN’s upcoming reported meeting with the Orange County
15 “Watchdog Agency—grand jury”. LUBINSKI amplified that the HR department was
16 concerned “it would look bad” if CONKLIN went ahead with his plans to appear and testify
17 before the grand jury. In an obvious attempt to prevent CONKLIN from testifying before the
18 grand jury, LUBINSKI ordered CONKLIN to cancel his appearance or reschedule it.
19 Plaintiff CONKLIN advised LUBINSKI that not only would it be wrong to cancel his
20 grand jury appearance, but also that he had “other matters” (like the Susan White perjury
21 investigation and the OCDA’s coverup of that investigation) to talk about before the
22 grand jury.

23 56. On February 16, 2017, Plaintiff CONKLIN appeared before the Orange
24 County “Watchdog agency—grand jury” and testified under oath. The fact that he appeared
25 and testified before the agency was well known to his peers and managers in the OCDA
26 office. These peers and managers were also well aware of the matters about which
27 CONKLIN had testified, and that his testimony generally involved “corrupt practices,
28 discrimination, and retaliation in the OCDA’s office”.

1 57. On February 17, 2017, OCDA HR Representative Chavez had a meeting with
2 Plaintiff CONKLIN. On this occasion, they retaliated against him by adding more physical
3 restrictions to his “light duty” status, including assigning him to desk duty. They told him he
4 could not go out into the field and/or serve subpoenas on any case (including, but not limited
5 to, Gidanian). Further, they both told him that if he did go out into the field for investigative
6 work or to serve subpoenas, and he was injured, he would lose his coverage under the
7 OCDA’s office workers compensation plan— in other words, he would not receive benefits
8 and coverage in case of an injury. CONKLIN was forced to sign a waiver of workers’
9 compensation coverage.

10 58. On February 21, 2017, Plaintiffs CONKLIN and SANTOS were told that the
11 Gidanian case was formally being taken away from them and assigned to a different
12 investigation unit entirely.

13 59. On February 23, 2017, Plaintiff SANTOS had a scheduled meeting with
14 HR Representative Madai Chavez regarding third party sexual harassment that he had been
15 enduring. Assistant Chief of the OCDA Investigation Unit, Defendant GUTIERREZ, called
16 Plaintiff SANTOS into a private meeting just before the scheduled meeting with Chavez.
17 GUTIERREZ told SANTOS “I will get Commander Mauger and Supervisor Tanner off your
18 back” and, further, “Tom’s fight is not your fight”. GUTIERREZ clearly attempted to get
19 SANTOS to desert his partner (CONKLIN) and made several promises to him if he were to
20 disassociate himself with CONKLIN— including “offering” SANTOS a premier assignment
21 in the Special Investigations Unit. GUTIERREZ told SANTOS, “I am watching you and I
22 will bring you up in this organization”. GUTIERREZ also warned SANTOS against
23 speaking with and testifying in front of the Orange County “Watchdog Agency” (grand jury).

24 60. Later that same day— February 23, 2017— Plaintiff CONKLIN met with Ed
25 Monge of the Orange County EEO Opportunity Access Office and filed a formal complaint
26 of harassment, discrimination, and retaliation against Defendants TANNER and MAUGER.

27 61. Later that same day— February 23, 2017— As soon as Plaintiff CONKLIN
28 arrived back to his office after filing the EEO complaint, Defendant TANNER and HR Rep

1 Chavez met with him and administered discipline in the form of a “write-up” for
2 insubordination to be placed in Conklin’s police personnel file. The insubordination “write-
3 up” was allegedly because Conklin had continued to work on the Gidianian file after being
4 told not to do so. Plaintiff CONKLIN was not read his rights under the Public Safety
5 Officers Procedural Bill of Rights (hereafter POBRA), nor was he allowed to have counsel or
6 a representative present.

7 62. On February 27-28, 2017, OCDA Investigators Nichols and Ayres worked
8 overtime on the Gidianian case with the approval of their supervisor(s). As noted previously
9 herein, Defendant TANNER had previously informed both Plaintiffs that the Gidianian case
10 was taken away from them because the OCDA would not pay them overtime to conduct the
11 investigation.

12 63. On March 13, 2017, Plaintiff SANTOS received his annual evaluation from
13 Defendant TANNER. TANNER also told him that, despite prior promises made to him,
14 SANTOS would not be eligible to attend OIS school. TANNER sais that similarly-situated
15 OCDA investigators would attend the OIS school, but there was not spot left for SANTOS.

16 64. On March 14, 2017, Plaintiff SANTOS sent an email to Defendant TANNER,
17 asking him if he and Plaintiff CONKLIN could follow-up with a victim that they had already
18 interviewed in the Gidianian case. TANNER made it clear again that he did not like the fact
19 that SANTOS was creating a paper trail and said to call him. Once he telephoned TANNER,
20 SANTOS was told that “I do not want Tom (Conklin) to participate in the Gidianian
21 investigation”. He also told him to “fill in Nichols as to what is going on”. When
22 SANTOS told TANNER that it was DDA Kirk who asked him to contact the victim again,
23 since SANTOS was due to testify on March 15, 2017.

24 65. On March 15, 2017, Defendant TANNER sent Plaintiff SANTOS an
25 email, asking about the status of the witness interview in the Gidianian case. SANTOS
26 responded back that he had not yet heard from Investigator Nichols whom he had informed
27 the day before “what was going on” per Defendant TANNER’s instructions.

28 66. On March 16, 2017, Plaintiff SANTOS received an email from Defendant

1 TANNER, stating that all reports in the Gidianian case from both he and CONKLIN needed
2 to first go to him (TANNER) prior to submitting those reports to the district attorney(s) on
3 the case. This was the first time that Plaintiff SANTOS had ever been asked to this, and it
4 certainly was not within the policy standards in the investigative bureau of the OCDA's
5 office.

6 67. On March 29, 2017, Plaintiffs CONKLIN and SANTOS met with a victim in
7 the Gidianian case. (She will be called as Jane Doe I because this is a public record). This
8 was a new victim who had kept quiet about her plight for at least one month. Plaintiffs also
9 met with two additional victims in the Gidianian case and scheduled interviews with them as
10 well.

11 68. On March 30, 2017, there was a meeting about the Gidianian investigation
12 between Plaintiffs and Investigator Fred Nichols, ADA Jeff Kirk, and Defendants TANNER
13 and HESTER. Defendant HESTER accused SANTOS of sending an "uncalled for email".
14 HESTER, like TANNER, apparently does not like paper trails for some reason, since he also
15 told SANTOS it would have been better if he telephoned Nichols. Plaintiff SANTOS
16 replied, "victims have a right to know when they are being stalked. Then, Defendant
17 HESTER took a different tone and indicated that he thought the Gidianian case belonged to
18 Plaintiffs as investigators. Defendant TANNER countered with, "It's Fred's case, not
19 Tom's". Following this impasse, Defendants HESTER and TANNER ended the meeting and
20 said they would get back to Plaintiffs as to who was going to manage the case going forward.

21 69. On April 3, 2017, Plaintiff SANTOS received an email from Investigator
22 Nichols, arguing that Jane Doe II was not really a victim. When Plaintiff CONKLIN
23 responded back with his own email, Investigator Nichols changed his tune, told them to
24 disregard the prior email, and "good luck with the case". Neither Plaintiff had received a
25 reply from either HESTER or TANNER as to which team was going to investigate the
26 Gidianian case going forward.

27 70. On April 4, 2017, both Plaintiffs reached out to another stalking victim in the
28 Gidianian case. Again, her name for purposes of this Complaint, this victim is identified as

1 Jane Doe II. The victim said she had been the victim of very unusual happenstances,
2 including knocks on her door at all times of the day and night. A full interview was
3 scheduled for Jane Doe III in the next week. Also, on that day, DDA Kirk told both that
4 Defendant TANNER had asked if they were sending unsigned reports to Kirk.

5 71. Also, on April 4, 2017, Plaintiff SANTOS received a text from Defendant
6 TANNER, ordering him to meet in the office. Plaintiff SANTOS told him that he had started
7 early in the morning and was then off shift. TANNER said the conversation could not occur
8 over the phone and demanded that SANTOS must come to the office. SANTOS asked
9 TANNER if he needed his “union rep”. TANNER, sounding very angry, said “it’s not
10 disciplinary”. SANTOS then went to the office where both Defendants TANNER and
11 HESTER were waiting for him. TANNER then accused SANTOS of “lying”, asking
12 HESTER to back him up in that claim. TANNER also accused SANTOS of being
13 “insubordinate” and “withholding evidence”. TANNER claimed that DDA Kirk had given
14 orders to interview additional victims and that Kirk then told him he did not know if
15 Plaintiffs had interview anyone. SANTOS informed TANNER and HESTER that he and
16 CONKLIN had discussed the interviewing of specific victims. SANTOS had learned that an
17 investigative assistant (rather than a licensed law enforcement investigator) had been
18 interviewing a victim or two (against OCDA office policy). SANTOS also informed both
19 TANNER and HESTER that Investigator Nichols was sending him inappropriate and
20 unprofessional emails. SANTOS continually asked during the hour-and-a-half meeting if he
21 was being disciplined and if he needed a “union rep”. Every time he asked, he was told “no”.

22 72. On April 5, 2017, Plaintiff SANTOS received additional harassing and
23 inappropriate email(s) from Investigator Nichols, which he viewed as a possible set-up.

24 73. On April 10, 2017, both Plaintiffs were transferred from the Special
25 Prosecution Unit for purposes of punishment, which was a punitive action under the
26 POBRA.

27 74. On April 13, 2017, SANTOS received a text to report to the office. Once
28 SANTOS arrived, Defendant TANNER started in on him, claiming that he stole money from

1 the county by falsifying an overtime slip. When SANTOS asked to have an attorney present,
2 TANNER ignored his request and asked even more questions designed to elicit what
3 TANNER hoped would be incriminating answers. When SANTOS told him he would not
4 answer any questions without an attorney or “union rep” present, TANNER told him he was
5 going to write him up for refusing to answer questions. Then, TANNER told him, “leave
6 (my office)”. As SANTOS returned to his desk he was confronted by DDA Jess Rodriguez
7 who stated that Defendant TANNER called him and began to ask "weird" questions about
8 SANTOS. DDA Rodriguez stated that TANNER began asking about overtime that
9 SANTOS had worked several weeks prior and had asked DDA Rodriguez for the audio
10 recording and any reports that SANTOS had submitted. Rodriguez stated to SANTOS to be
11 careful around TANNER because it was pretty obvious that TANNER was on a
12 “witch-hunt”.

13 75. On April 14, 2017, Defendant TANNER changed SANTOS’ overtime from 4
14 hours to 1.45 hours for work performed on the Gidianian case on April 4, 2017.

15 76. On April 17, 2017, Plaintiff SANTOS filed a workers’ compensation claim
16 with Defendant OC.

17 77. On April 18, 2017, TANNER texted SANTOS that he had reviewed his time
18 card again and said his overtime was denied. On that same date, Plaintiff SANTOS
19 complained to HR Representative Madai Chavez about the pay reduction, and also told her
20 that TANNER was harassing him and trying to intimidate him. SANTOS informed Chavez
21 that TANNER took away his overtime and that he had even contacted SANTOS’ union
22 counsel for the purpose of trying to find something for which to punish him. HR
23 Representative Chavez’ unlawful response was “he has the right to do that, you know”.
24 Chavez also had no response when SANTOS asked her how he could be transferred out from
25 underneath of TANNER’s supervision.

26 78. On May 23, 2017, SANTOS was released to go back to work from his workers’
27 compensation doctor(s).

28 ///

1 **JOE FELZ CASE— RELATING TO PLAINTIFF SANTOS**

2 **ONLY:**

3 79. In the early morning hours of election night— November 9, 2016— Fullerton
4 City Manager Joe Felz was inebriated and had crashed his vehicle into a citizen’s tree in a
5 residential neighborhood. The resident’s whose property was damaged called the Fullerton
6 Police Department to report the incident, advising the FPD person taking the call that the
7 person who hit her tree was attempting to back up and leave the scene. When a Fullerton
8 patrol officer arrived at the scene, Mr. Felz, slurring his words, told the officer “I’m a City
9 Manager” and “call Danny Hughes”. Danny Hughes was, at the time, the Chief of Police of
10 the Fullerton Police Department, who was about to retire from law enforcement and work at
11 Disneyland as the Assistant Director of Security. The Fullerton PD officer did call his chief.
12 Chief Hughes then dispatched one of his sergeants, identified as JC, to go to the scene of the
13 accident and drive the City Manager home. City Manager Joe Felz was not arrested.

14 80. When dispatching Sergeant JC to the scene to drive the City Manager
15 home, Chief Hughes was calling in a favor. Sometime before that incident, Sergeant JC,
16 was found by another Fullerton PD officer having sexual relations in his police vehicle while
17 on duty behind a local business. Sergeant JC was not arrested and, instead, contacted his
18 fellow officers to let them know that, if asked, they should state that he (Sergeant JC) was
19 involved in a work-related surveillance. Chief Hughes covered up the misconduct by his
20 sergeant and, when he needed him in the Joe Felz DUI/ attempted hit and run case, Sergeant
21 JC repaid the favor to Chief Hughes.

22 81. Plaintiff SANTOS was assigned by the OCDA Investigation Office to
23 investigate the Joe Felz incident. Based on the above facts, SANTOS discovered evidence
24 which led him to conclude that Chief Hughes had criminally obstructed justice.

25 82. On January 4, 2017, SANTOS informed Defendant Assistant District Attorney
26 BAYTIEH that he was concerned about the case because of the DUI, the destruction of city
27 property, and the cover-up that seemed to have happened. Defendant BAYTIEH’s response
28 was “I am friends with Chief Hughes and we are only going to be investigating the DUI and

1 not anything else.” When Defendant BAYTIEH sensed resistance from Plaintiff SANTOS,
2 he (BAYTIEH) threatened to take the investigation away from SANTOS.

3 83. On February 16, 2017, Defendant TANNER told Plaintiff SANTOS that the
4 Felz case still would be his investigation— however, TANNER said he would be “second
5 chairing” the investigation.

6 84. On February 22, 2016, Defendant TANNER took the Felz case investigation
7 away from SANTOS completely. It should be noted that February 22, 2017 was the same
8 day on which Defendant TANNER cursed at SAN TOS and threatened him “to stay out
9 of (Plaintiff) CONKLIN’s issues”.

10 **SEXUAL HARASSMENT— FALSE ALLEGATIONS**
11 **AGAINST ABRAHAM SANTOS AND FAILURE OF**
12 **OCDA’S OFFICE TO PROTECT SANTOS:**

13 85. In or about August, 2016, false rumors in the OCDA office were launched that
14 Plaintiff SANTOS was having an affair with one of his investigation assistants. These
15 rumors have persisted until the present day even though they have proven to be false.
16 However, it is suspected that sworn and unsworn law enforcement employees in the OCDA
17 office have viewed Investigator Santos in an unfavorable light because of these false rumors.

18 86. On or about November 10, 2016, Plaintiff SANTOS discovered that his then-
19 supervisor, Stan Berry, was asking around about him. The allegations he discovered were:
20 (1) he was not doing his job; (2) he was leaving work early; and, (3) that he was having an
21 affair with an investigative assistant. SANTOS also learned that these allegations, all false,
22 had been generated by Defendants ELLISON, CHANATASOMBUTE, and TRINIDAD.
23 The true facts were that it was Defendants CHANATASOMBUTE and TRINIDAD who were
24 having the extramarital affair, not Plaintiff SANTOS. Nevertheless, Defendant
25 CHANATASOMBUTE, in conspiracy with his lover TRINIDAD, went to Commander Kelly
26 Core and complained that Plaintiff SANTOS was having an affair with another investigative
27 assistant. Commander Core then went to Defendant GUTIERREZ about the claim, who then
28 contacted Stan Berry to discuss it with Plaintiff SANTOS. Defendant GUTIERREZ was the

1 #2 supervisor over the OCDA Investigative Bureau.

2 87. On or about November 17, 2016, Plaintiff SANTOS met with Supervisor Stan
3 Berry again to address the false rumors, and to deny the same.. Berry said he would talk to
4 Defendant GUTIERREZ.

5 88. On or about November 29, 2016, Plaintiff SANTOS met with Defendant
6 GUTIERREZ and his supervisor, Stan Berry, about the false sexual harassment claims.
7 SANTOS complained that he knew which persons started the false rumors and why they did
8 it. SANTOS blamed CHANTANASOMBUTE and TRINIDAD for spreading the false
9 rumors throughout the OCDA office. He also told GUTIERREZ and Berry that he was
10 actually the victim of sexual harassment, and that both CHANTANASOMBUTE and
11 TRINIDAD were the ones having the sexual affair.

12 89. Rather than take a complaint of third party sexual harassment by bringing
13 OCDA HR into the discussion, Plaintiff SANTOS was told by Defendant GUTIERREZ “to
14 let the incident blow over” and “you have a long career ahead of you.” GUTIERREZ also
15 advised SANTOS that he needed to be careful in his dealings with Defendant TRINIDAD
16 “because of her intimate knowledge of the people on the Tenth Floor and the extramarital
17 relationships they have with coworkers.” On information and belief, Defendant GUTIERREZ
18 feared that he would be confronted with the wrath of Defendant TRINIDAD because of
19 similar skeletons in his own closet. In other words, Defendant GUTIERREZ refused to help
20 SANTOS because he was frightened about the control and information about other sexual
21 affairs among OCDA employees that Defendant TRINIDAD, an investigative assistant with
22 the OCDA, had with the office. Therefore, Defendant GUTIERREZ never saw to it that
23 SANTOS’ sexual harassment complaint was appropriately addressed nor investigated by the
24 OCDA office.

25 90. On or about March 1, 2017, Plaintiff SANTOS gave testimony about the
26 sexual harassment against him, and the failure to prevent that harassment, by the highest
27 levels of the OCDA Investigative office.

28 91. On or about March 2, 2017, Plaintiff SANTOS made a formal complaint of

1 sexual harassment with Ed Monge of the EEO employment access office for Defendant
2 OC. Among other things, Monge told SANTOS “you have a case for sexual discrimination
3 and a hostile work environment” and promised to conduct an investigation. On information
4 and belief, neither Monge nor anyone in his EEO office, conducted an investigation into
5 Plaintiff SANTOS’ complaint. Defendant TANNER, Plaintiff SANTOS’ supervisor in the
6 OCDA at the time, apparently knew that Plaintiff SANTOS had made a complaint with
7 EEO officer Monge, asking him when SANTOS arrived back at the office, “is there
8 something you want to tell me?” SANTOS responded “no”. TANNER then made a veiled
9 threat to SANTOS by telling him, “I am preparing your annual evaluation.”

10 **FIRST GOVERNMENT TORT CLAIM FILED BY**
11 **PLAINTIFFS CONKLIN AND SANTOS:**

12 92. On May 26, 2017, Plaintiffs CONKLIN and SANTOS filed a tort claim with
13 Defendant OC pursuant to *Government Code* §§910, et seq.

14 93. Plaintiffs CONKLIN and SANTOS were required to attend an “investigation”
15 commissioned by County Counsel for Defendant OC, since they were still employees of
16 Defendant OC at the time of the investigation. If either Plaintiff had not attended the
17 “investigation”, they could have been terminated from their employment based on
18 insubordination. Further, the letter from outside counsel who was to conduct the
19 “investigation” specified the following:

20 A) “The interview I intend to conduct may be considered an investigatory
21 interrogation that could lead to ‘punitive action’ (under specific sections of the POBRA).”

22 B) “The interview will cover allegations in the Complaints, questions on
23 related matters, and inquiries as to any wrongdoing claimed by your client(s), against the
24 County or its representatives, since the Complaints were filed.”

25 94. Both Plaintiffs CONKLIN and SANTOS involuntarily attended the
26 “investigation” with their counsel present. At each session, each Plaintiff was advised of
27 their rights under *Lybarger v. City of Los Angeles*, 40 Cal.3d 922 (1985). In California,
28 *Lybarger* admonishments are given before law enforcement investigations when it appears (a)

1 that an employee with peace officer status may be charged with a criminal offense as a result
2 of his or her misconduct, or (b) the employee refuses to answer questions on the grounds that
3 his or her responses to the “investigation” may be criminally self-incriminating. The
4 *Lybarger* admonishments advise the peace officer employee that, although he has the right
5 to remain silent and refuse to answer under the Fifth Amendment to the United States
6 Constitution, his silence could be deemed as insubordination, leading to administrative
7 discipline (including termination of employment). On the other hand, any statement made
8 under the threat of criminal prosecution would not be used against him in any subsequent
9 criminal proceeding.

10 95. Each Plaintiff gave a full statement about their allegations contained in their
11 respective government tort claim.

12 96. At Plaintiff CONKLIN’s investigatory session, he turned over a draft report
13 of an investigation he had been working on under the direction of Defendants
14 RACKAUCKAS and LUBINSKI— an investigation commissioned by Defendant
15 RACKAUCKAS into the campaign and other alleged activities of Todd Spitzer, currently a
16 member of Defendant OC’s governing Board of Supervisors. Todd Spitzer is currently
17 running against Defendant RACKAUCKAS for election for District Attorney in June, 2018.
18 Plaintiff CONKLIN turned over the draft report into the Spitzer investigation because he
19 believed that it was an unlawful investigation and an abuse of public office commissioned by
20 Defendants RACKAUCKAS and LUBINSKI against a political rival. Mr. Spitzer had once
21 been a supervising prosecutor/ employee in the OCDA, and he was a prime supporter of
22 the “Marsy’s Law” in California, which upheld victims’ rights in the criminal justice system.
23 Plaintiff CONKLIN’s draft report indicated that, in his investigation, with the exception of
24 one minor matter, entirely cleared Mr. Spitzer of any wrongdoing in connection with
25 campaign or related activities. Plaintiff CONKLIN turned over the draft Spitzer report to
26 Commander Kelly Core of the OCDA and to the outside counsel investigating the matter.

27 97. On August 10, 2017, County Counsel Leon Page wrote a letter to Plaintiffs
28 and their counsel, indicating in detail why Defendant OC was going to deny their respective

1 tort claims. This letter was intended to be supportive of the outside counsel’s “investigation”
2 and offered details surrounding his (outside counsel) conclusions. In Plaintiffs’ opinion,
3 County Counsel Page’s letter was a “whitewash” of their protected allegations in the tort
4 claim.

5 98. On September 11, 2017, Defendant OC officially rejected Plaintiffs’ respective
6 tort claims and gave them six months to file a lawsuit asserting state law violations.

7 **TODD SPITZER DRAFT REPORT IS LEAKED TO**
8 **PRESS— DEFENDANT OC RETALIATES AGAINST**
9 **PLAINTIFF CONKLIN**

10 99. On or about July 11, 2017, the draft Spitzer report that Plaintiff CONKLIN
11 had submitted to outside counsel during the “investigation” of his protected complaints
12 contained in the tort claim was leaked to the press by someone. The press reported fully on
13 the Spitzer investigation commissioned by Defendants RACKAUCKAS and LUBINSKI. As
14 noted, Plaintiff CONKLIN’s investigation had cleared Mr. Spitzer of any wrongdoing except
15 for one minor pending matter to be determined by the FPPC in California. Undoubtedly,
16 Defendant RACKAUCKAS was publicly embarrassed by the disclosure.

17 100. Plaintiff CONKLIN did not leak the draft Spitzer report to the press. On
18 information and belief, and based on evidence in his possession, the draft Spitzer report
19 released to the press came from the OCDA database and was not the same report that
20 Plaintiff had in his possession and which was turned over to outside counsel conducting
21 Plaintiff’s personnel investigation.

22 101. On July 14, 2017, Defendant RACKAUCKAS issued a letter to Plaintiff
23 CONKLIN placing him on administrative leave with pay and requiring him to turn his police
24 identification, badge, and firearm. Attached to the letter was a section from Defendant OC’s
25 personnel policy manual, entitled the 2003 Personnel and Salary Resolution, advising Plaintiff
26 CONKLIN that this was the County’s administrative leave/ leave of absence policy.
27 As noted, Defendant RACKAUCKAS cited this rule under Article 1, Section 7 of Defendant
28 OC’s 2003 PSR, entitled “Leave of Absence With Pay”:

1 A) “An Agency/ Department Head may authorize an employee to
2 be absent with pay from his or her regular work area for
3 reasons others than physical or mental illness for a period of
4 time not to exceed one hundred twenty (120) regularly
5 scheduled working hours if the Agency/ Department Head
6 finds that such absence:

- 7 1) Contributes to the employee’s ineffectiveness in
8 his or assigned duties and responsibilities; or,
9 2) Contributes to the functions and goals of the County.

10 B) An employee may be absent with pay from his or her regular
11 work area in excess of one hundred twenty (120) regularly
12 scheduled working hours upon a request by the Agency/
13 Department Head, if the Human Resources Officer or his
14 designee and the County Executive Officer approve. Forms
15 requesting an absence with pay from the regular work area
16 in excess of one hundred twenty (120) regularly scheduled
17 hours shall be prescribed by the Human Resources Director
18 and shall state specifically the reason for the request and the
19 beginning and ending dates of the absence.....”

20 102. The administrative leave with pay notice, sent by Defendant RACKAUCKAS
21 to Plaintiff CONKLIN on or about July 14, 2017, violated Defendant OC’s own human
22 resources policy on such leaves in Article 1, Section 7 of the 2003 PSR in the following
23 manner: (a) the leave notice was not approved either by Defendant OC’s Human Resources
24 Director or Chief Executive Officer; and, (b) it did not “state specifically the reason for the
25 request and the beginning and ending dates of the absence...”.

26 103. By placing Plaintiff CONKLIN on administrative leave with pay in violation of
27 its own policies, Defendant OC, acting directly through Defendant RACKAUCKAS,
28 retaliated against Plaintiff CONKLIN for his participation in an investigation commissioned

1 by Defendant OC to investigate Plaintiff's protected activities as to his tort claim filing.
2 Further, as noted, the draft Spitzer report was provided by Plaintiff CONKLIN in the spirit
3 of cooperation during this outside investigation into his tort claim of protected activities.

4 104. By placing Plaintiff CONKLIN on administrative leave with pay, taking
5 away his access to his employment, and by seizing his police identification, badge, and
6 issued firearm, Defendant OC, acting directly through Defendant RACKAUCKAS, retaliated
7 against Plaintiff CONKLIN for the filing of his protected tort claim and participating in the
8 required investigation of those claims.

9 105. Defendant RACKAUCKAS, after placing Plaintiff CONKLIN on an
10 unauthorized administrative leave with pay, initiated a criminal investigation into the
11 disclosure to the press of the Spitzer investigation report with deputies from the Orange
12 County Sheriff's Department. Plaintiff CONKLIN was made a target of this criminal
13 investigation by Defendant RACKAUCKAS.

14 106. On information and belief, the OCDA, under the direction of Defendant
15 RACKAUCKAS, has a policy and practice of putting its law enforcement investigators who
16 exercise their free speech rights under the First Amendment to the United States Constitution
17 and under Article 1, Section 2 of the California Constitution on administrative leave with pay
18 before terminating them.

19 107. Plaintiff CONKLIN has remained in the status of being on administrative
20 leave with pay since July 14, 2017. Defendant OC has declined to provide a reason why
21 he is required to remain on leave and cannot return to work. Defendant OC eschewed the
22 opportunity to have outside counsel or in house human resources personnel to investigate
23 Plaintiff CONKLIN on the leaking of the Spitzer report by some other law enforcement agent
24 in the OCDA's office.

25 **SECOND GOVERNMENT TORT CLAIM FILED BY**

26 **PLAINTIFF CONKLIN:**

27 108. On or about December 12, 2017, Plaintiff CONKLIN filed a second government
28 tort claim pursuant to *Government Code* §§ 910, et seq., challenging his placement on his

1 unlawful placement on administrative leave.

2 109. On or about January 18, 2018, Defendant OC issued a rejection letter as to
3 Plaintiff CONKLIN's second government tort claim.

4 **SECOND GOVERNMENT TORT CLAIM FILED BY**
5 **PLAINTIFF SANTOS**

6 110. As noted above, Plaintiff SANTOS was required to attend an investigation
7 of an outside counsel commissioned by Defendant OC to investigate the protected allegations
8 in his first government tort claim of May 26, 2017.

9 111. On August 10, 2017, Leon Page, County Counsel for Defendant OC, issued an
10 letter rejecting Plaintiff's protected claims. The official rejection notice was issued by
11 Defendant OC on September 11, 2017.

12 112. In County Counsel Page's letter of August 10, 2017, Page, in effect, called
13 Plaintiff SANTOS "a liar". Page's letter also falsely claimed that Plaintiff SANTOS has
14 been "counseled repeatedly" in the past— in fact, Plaintiff SANTOS has received
15 "exceptional" performance evaluations covering the time he spent as an investigator in the
16 OCDA's office. Further, the rejection letter did not address any of Investigator Santos'
17 allegations of sexual harassment, nor did it indicate that any of "his" favorable witnesses were
18 interviewed on the subject.

19 113. After Plaintiff SANTOS attended the required investigation of outside counsel
20 into his protected activities enunciated in the first government tort claim filed on May 26,
21 2017, he was immediately subjected to retaliation and disparate treatment when he returned to
22 his investigative duties in the OCDA's office. Events which are evidence of this retaliation
23 and/or disparate treatment include, but are not limited to, the following:

- 24 A) On July 10, 2017, Plaintiff SANTOS emailed Nancy Estrada from
25 County of Orange Human Resources to review his police personnel file
26 to see what was in it. Ms. Estrada advised SANTOS that she first had to
27 review his file to "make sure there were things in it that were supposed to
28 be there", and she proposed an in-person meeting to go through the file

1 on July 11, 2017 at 8:00 A.M. However, on July 11, 2017, SANTOS
2 received an email from Ms. Estrada, indicating that she wanted to change
3 the 8:00 A.M. scheduled meeting to 3:00 P.M. that same day. The
4 meeting between the two did occur during that day— the only items in
5 SANTOS’ personnel file were his outstanding performance evaluations
6 and the paperwork he had signed when he as hired. Therefore, if as
7 stated in County Counsel Leon Page’s rejection letter of August 10, 2017
8 that SANTOS had been counseled for unsatisfactory performance by
9 several sources in the past, Mr. Page did not get that information from his
10 personnel file.

11 B) On July 12, 2017, Plaintiff SANTOS was approached by his direct
12 supervisor (Frank Reynoso) in the domestic violence unit and was asked
13 for case notes on the few cases he was handling to verify he was doing
14 his job and keeping case notes as required. SANTOS was singled out for
15 this task, and the retaliatory inference from this discussion is that
16 Reynoso was checking up on him because of the prior tort claim on May
17 26, 2017.

18 C) On July 13, 2017, counsel for Plaintiff SANTOS, Joel Baruch, wrote a
19 letter to outside counsel addressing allegations of on-the-job retaliation
20 that his client had been suffering since filing the first tort claim and since
21 the investigation session of outside counsel about a week before. On
22 information and belief, outside counsel passed on the contents of the
23 letter or the letter itself to County Counsel Page. Neither outside
24 counsel nor County Counsel responded to the allegations in this letter in
25 an effective fashion. Further, the retaliation as alleged in the letter did not
26 stop and, in fact, became more intense.

27 D) On July 17, 2017, when Plaintiff SANTOS came to work, he discovered
28 that his access to the database in several drives had been cut off. In other

1 words, if SANTOS attempted to access his former files before his
2 transfer to the domestic violence unit, he learned that “access was
3 denied”. This denial of access meant that SANTOS no longer had access
4 to his investigatory files which were the subject of his complaints in the
5 first tort claim he filed on May 26, 2017. Once Plaintiff SANTOS
6 received the aforesaid rejection letter of County Counsel Leon Page on
7 August 10, 2017, especially given the fact that Mr. Page essentially
8 called him a “liar” and “poor employee”, he realized the reason why his
9 office had denied him access to his former files— denial of access to
10 proof of his claim meant that the OCDA, acting on instructions from
11 County Counsel, could alter the files if it wished by adding subsequent
12 reports about his performance and, also, by deleting some of the records.
13 Whether, in fact, this was done by the OCDA will be a subject of
14 discovery in this case.

15 E) In his first tort claim, and in his July investigative session with
16 outside counsel, Plaintiff SANTOS had accused of Defendant
17 TRINIDAD and Defendant CHANTASOMBUTE of spreading
18 false rumors about SANTOS’ alleged affair with another
19 investigative assistant. On July 28, 2017, SANTOS received notification
20 from confidential sources that the OCDA’s office was conducting an
21 internal affairs investigation on Defendant TRINIDAD. He further
22 learned from these sources that, during TRINIDAD’s interview, she was
23 asked about SANTOS purported relationship with the other
24 investigative assistant. Present in this interview was HR representative
25 Madai Chavez, a person whom SANTOS contended in his first tort claim
26 was an adverse party who had participated in his retaliation. This
27 interview with Defendant TRINIDAD was about two weeks before
28 County Counsel Leon Page wrote the August 10, 2017 rejection letter on

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the first tort claim, and failed to mention anything about the rejection or acceptance of SANTOS’ first tort claim on the sexual harassment issue.

F) On August 11, 2017, one day after receiving County Counsel’s rejection letter on his first tort claim, Plaintiff SANTOS asked persons who would or should have been contacted by outside investigation counsel about his prior performance. Mr. Page, in the rejection letter, falsely claimed that SANTOS had been counseled by several people in the OCDA office about his prior performance. Deputy District Attorney Christy Warden was one of those people contacted— she advised SANTOS the exact opposite of what Mr. Page had stated in his rejection letter, in that she told him she had been contacted by domestic violence unit’s supervising investigator about SANTOS’ performance, and she told him that she “had nothing but positive things to say about him”. Another deputy district attorney, Caroline Smith, said the same thing as DDA Warden. Both stated that, in fact, they memorialized their positive comments in an email to Supervising Investigator Reynoso. Given that all of his prior performance reviews were outstanding, and given the positive statements of the deputy district attorneys noted above, SANTOS concluded that County Counsel Page had lied in the rejection letter about having knowledge of non-existent prior performance issues.

G) On August 16, 2017, Plaintiff SANTOS met with his supervisor, Frank Reynoso. Upon being asked if he was ever counseled for performance reasons, Reynoso said the only comments he ever heard from the DDA’s in the domestic violence unit were “positive”. Frank Reynoso also told SANTOS that he had not advised outside investigating outside counsel that he (Reynoso) had ever spoken to him about being late to work or leaving early from work. Reynoso also showed SANTOS his “drop file” in which all the performance comments about him were

1 “positive”.

2 H) Also, on August 16, 2017, Investigator Santos emailed his supervisor,
3 Frank Reynoso, regarding the Daniel Gidanian case mentioned
4 prominently in the first tort claims of both Plaintiffs SANTOS and
5 CONKLIN. With this email, SANTOS attached his supplemental report
6 on the Gidanian case. Reynoso said he did not want have “anything to do
7 with this report”. Reynoso contacted Investigator Stan Berry, who
8 suggested that the report being sent to Defendant HESTER, and
9 then emailed him the report.

10 I) Also, on August 16, 2017, Plaintiff SANTOS went to the office’s HR
11 department and had them pull his personnel file once again. Once again,
12 as before, there was nothing of a disciplinary nature or performance
13 counseling in the file. As before, the file contained only his two
14 outstanding written performance reviews and his hire paperwork.

15 J) On September 11, 2017, Plaintiff SANTOS was contacted by Reynoso
16 and informed him that Defendants HESTER and MAUGER were
17 concerned about the latest report on the Gidanian case and wanted a
18 meeting to discuss it.

19 K) On September 12, 2017, with Investigator Reynoso present at the
20 meeting arranged on the prior day, Defendant HESTER violently yelled
21 at SANTOS and threw the “corrected” report across his desk to prevent
22 SANTOS from having the “corrected” report in his possession.
23 HESTER also yelled at SANTOS to “get out of my office”.

24 L) Also, on September 12, 2017, Plaintiff SANTOS wrote Defendant
25 HESTER an email memorializing these events discussed above. On the
26 same date, HESTER wrote a response to the email, accusing SANTOS of
27 “insubordination and inappropriate behavior which will not be tolerated.”
28 HESTER also instructed SANTOS that, “if you have any further issues

- 1 or comments”, he should file a grievance with his union representative.
- 2 M) The reason that Plaintiff SANTOS filed the draft final report on his and
- 3 Plaintiff CONKLIN’s prior investigation into the Daniel Gidianian case
- 4 was to protect against Gidianian’s stalking of as many as 20-30 victims, a
- 5 fact that had been uncovered in their prior investigation. In doing so,
- 6 Investigator Santos was attempting to comply with “Marsy’s Law”,
- 7 which has been codified into Article I, section 28 of the California
- 8 Constitution, as well as acting in compliance with the core mission
- 9 statement of the OCDA. Victims of stalking have an absolute right to
- 10 know they are being targeted, and the OCDA’s office has violated the
- 11 California Constitution and their own core mission statement by
- 12 retaliating against Plaintiffs SANTOS and CONKLIN— first by
- 13 removing both investigators from the Gidianian investigation, and then
- 14 closing it, without notifying the stalking victims. Many of Gidianian’s
- 15 stalking victims are fellow peace officers and are totally unaware that
- 16 Gidianian has targeted them.
- 17 N) On September 14, 2017, Plaintiff SANTOS was instructed to attend a
- 18 meeting with Supervising Investigator and Command Clint McCall. At
- 19 the meeting, SANTOS was instructed not to further investigate the
- 20 Gidianian matter, not to contact any victim while on or off duty , and not
- 21 speak with the deputy district attorney associated with the case, or he
- 22 would be terminated.
- 23 O) On or about September 15, 2017, Plaintiff SANTOS was terminated
- 24 from his employment with the OCDA without the required hearing
- 25 under the POBRA.

26 114. On or about January 18, 2018, Defendant OC issued a rejection letter as to

27 Plaintiff SANTOS’ second government tort claim.

28 ///

FIRST CAUSE OF ACTION

(Violation of Federal Civil Rights Under First Amendment to United States Constitution— 42 U.S.C. 1983, Et Seq.— Brought By Plaintiff CONKLIN Against Defendants RACKAUCKAS, BAYTIEH, WAGNER, LUBINSKI, TALLEY, TANNER, MAUGER, GUTIERREZ, And DOES 1 through 20)

115. Plaintiff realleges and incorporates herein those matters contained in paragraphs 1 through 114 as though fully set forth.

116. This cause of action arises under Plaintiff CONKLIN’s rights as a citizen under the First Amendment to the United States Constitution. As to the First Amendment, Plaintiff had a right to exercise free speech and/or association by engaging in protected activities, by testifying before the Orange County grand jury, by filing protected EEO complaints, by participating in mandated investigations, and by making lawful “whistleblowing” complaints on a good faith reasonable belief to protect victims of crime and accused criminal defendants whose constitutional and statutory rights were being unlawfully impaired by his OCDA office.

117. The individual defendants named in this cause of action retaliated against Plaintiff in the manner described in this Complaint for exercising his free speech and/or association rights under the First Amendment to the United States Constitution. Violations of First Amendment rights may be addressed pursuant to 42 U.S.C. 1983, et seq.

118. At all times herein mentioned, Plaintiff CONKLIN has been unlawfully retaliated against in his employment for the exercise of his free speech and/or association rights in the manner described by the individual defendants named in this cause of action.

119. The unlawful retaliation which Plaintiff CONKLIN has experienced, as set forth in detail in paragraphs of this Complaint, constitute adverse employment actions, including, but not limited to, transfer to assignments in the OCDA office which have caused Plaintiff to lose income, the destruction of a law enforcement career and resultant loss of reputation among his peers and to prospective law enforcement or other employers, the

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

1 submission of damaging and false allegations of unlawful behavior which are now contained
2 forever in his police personnel file, and, most recently, his placement on administrative leave
3 with pay as a prelude to his termination.

4 120. As a proximate result of this unlawful retaliation because of his exercise of
5 free speech and/or association rights guaranteed to him under the First Amendment, Plaintiff
6 has sustained, and will continue to sustain for a period of time, economic and non-economic
7 damages in an amount in excess of \$5,000,000 and according to proof at the trial of this
8 action.

9 121. Plaintiff is entitled to his reasonable attorney's fees and expenses pursuant to the
10 provisions of 42 U.S.C. 1983, et seq.

11 122. The conduct of each of the individual defendant named in this cause of action
12 was retaliatory and in violation of Plaintiff's rights under the First Amendment. The
13 retaliatory conduct committed against Plaintiff was intentional, malicious, oppressive,
14 fraudulent, and was designed to, and did, cause Plaintiff injury. Plaintiff is therefore entitled
15 to an award of punitive damages against each individual defendant named in this cause of
16 action in an amount according to proof at the trial of this action.

17
18 **SECOND CAUSE OF ACTION**

19 **(Violation of Federal Civil Rights Under First Amendment to**
20 **United States Constitution— 42 U.S.C. 1983, Et Seq.— Brought By**
21 **Plaintiff SANTOS Against Defendants RACKAUCKAS, BAYTIEH,**
22 **TANNER, MAUGER, GUTIERREZ, HESTER, MAUGER, TRINIDAD,**
23 **CHANATASOMBUTE, And DOES 1 through 20)**

24 123. Plaintiff realleges and incorporates herein those matters contained in
25 paragraphs 1 through 122 as though fully set forth.

26 124. This cause of action arises under Plaintiff SANTOS' rights as a citizen
27 under the First Amendment to the United States Constitution. As to the First Amendment,
28 Plaintiff had a right to exercise free speech and/or association by engaging in protected

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

1 activities, by testifying before the Orange County grand jury, by filing protected EEO
2 complaints, by participating in mandated investigations, and by making lawful
3 “whistleblowing” complaints based on a good faith reasonable belief, to protect victims of
4 crime and accused criminal defendants whose constitutional and statutory rights were being
5 unlawfully impaired by his OCDA office.

6 125. The individual defendants named in this cause of action retaliated against
7 Plaintiff in the manner described in this Complaint for exercising his free speech and/or
8 association rights under the First Amendment to the United States Constitution. Violations of
9 First Amendment rights may be addressed pursuant to 42 U.S.C. 1983, et seq.

10 126. At all times herein mentioned, Plaintiff SANTOS has been unlawfully
11 retaliated against in his employment for the exercise of his free speech and/or association
12 rights in the manner described by the individual defendants named in this cause of action.

13 127. The unlawful retaliation which Plaintiff SANTOS has experienced, as set
14 forth in detail in paragraphs of this Complaint, constitute adverse employment actions,
15 including, but not limited to, transfer to assignments in the OCDA office which have caused
16 Plaintiff to lose income, the destruction of a law enforcement career and resultant loss of
17 reputation among his peers and to prospective law enforcement or other employers, the
18 submission of damaging and false allegations of unlawful behavior which are now contained
19 forever in his police personnel file, and, most recently, his termination from his employment
20 with the OCDA.

21 128. As a proximate result of this unlawful retaliation because of his exercise of
22 free speech and/or association rights guaranteed to him under the First Amendment, Plaintiff
23 has sustained, and will continue to sustain for a period of time, economic and non-economic
24 damages in an amount in excess of \$5,000,000 and according to proof at the trial of this
25 action.

26 129. Plaintiff is entitled to his reasonable attorney’s fees and expenses pursuant to the
27 provisions of 42 U.S.C. 1983, et seq.

28 130. The conduct of each of the individual defendant named in this cause of action

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

1 was retaliatory and in violation of Plaintiff’s rights under the First Amendment. The
2 retaliatory conduct committed against Plaintiff was intentional, malicious, oppressive,
3 fraudulent, and was designed to, and did, cause Plaintiff injury. Plaintiff is therefore entitled
4 to an award of punitive damages against each individual defendant named in this cause of
5 action in an amount according to proof at the trial of this action.

6
7 **THIRD CAUSE OF ACTION**

8 **(Violation of Federal Civil Rights Under First Amendment to the United**
9 **States Constitution— 42 U.S. C. 1983, Et Seq— Brought By Plaintiffs**
10 **CONKLIN and SANTOS Against Defendant OC— *Monell* Violation)**

11 131. Plaintiffs reallege and incorporate herein those matters contained in
12 paragraphs 1 through 130 as though fully set forth.

13 132. Pursuant to 42 U.S.C. Sections 1983, et seq., public entity defendants, such as
14 Defendants OC (and its agency, the OCDA), are “persons” that can be held liable for
15 infringement of the plaintiff’s constitutional rights that are the direct result of their public
16 employer’s official policy. The Court held that this liability only existed when the
17 constitutional infringement was the direct result of an official policy, custom, or practice.

18 133. At all times herein mentioned, Defendant OC’s law enforcement agency known
19 as the OCDA, has established a firm official policy to punish its law enforcement officers and
20 even non-peace officer employees such as deputy district attorneys employed by the OCDA
21 who make lawful protected complaints, who engage in lawful protected activities, who make
22 “whistleblowing” complaints based on their good faith reasonable beliefs, and who testify
23 under oath against OCDA unlawful practices before public inquiry bodies like a grand jury.
24 This punishment takes the form of disciplinary measures, including, but not limited to,
25 transfer of assignments within the OCDA office resulting on a loss of pay, placement of false
26 and negative performance assessment in their police personnel file or other personnel files,
27 disciplinary write-ups, marginalization and isolation of law enforcement employees, using the
28 employee’s disability or workers’ compensation status as an excuse for limiting or taking

1 away the employee’s critical job responsibilities, putting the employee on an administrative
2 leave with pay as a method of punishment and as a prelude to termination that will occur after
3 his or her protected complaints and/or protected activities are investigated or resolved against
4 them in a court proceeding, and, as to law enforcement peace officer complainants such as
5 Plaintiffs herein, violating the law by not providing them with the protections afforded by the
6 POBRA and by not providing them with traditional due process hearing procedures.

7 134. In Plaintiffs’ case, the official policies of retaliation as described above, have
8 proximately resulted in the destruction of their law enforcement careers.

9 135. As a proximate result of these official policies of unlawful retaliation because of
10 the exercise of free speech and/or association rights guaranteed to all OCDA employees under
11 the First Amendment, Plaintiffs have each sustained, and will continue to each sustain for a
12 period of time, economic and non-economic damages in an amount in excess of \$5,000,000
13 and according to proof at the trial of this action.

14 136. Plaintiffs are each entitled to his reasonable attorney’s fees and expenses
15 pursuant to the provisions of 42 U.S.C. 1983, et seq.

16
17 **FOURTH CAUSE OF ACTION**

18 **(Violations of *Labor Code* §§1102.5 and 1105-1106— Brought By Plaintiffs**
19 **CONKLIN and SANTOS Against Defendant OC and DOES 1 Through 20,**
20 **inclusive)**

21 137. Plaintiffs reallege and incorporate herein those matters contained in
22 paragraphs 1 through 136 as though fully set forth.

23 138. At all times herein mentioned, *Labor Code* §§1102.5 and pertinent subdivisions
24 were in full force and effect.

25 139. *Labor Code* §1102.5(a) precludes an employer in the State of California
26 preventing an employee from disclosing information to a government or law enforcement
27 agency, to a person with authority over the employee, or to another employee who has the
28 authority to investigate, discover, or correct the asserted noncompliance or violation of law

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

1 being raised by the employee. This subsection also provides that it is unlawful for an
2 employer to make, adopt, or enforce any rule, regulation or policy from testifying before any
3 public body conducting an investigation, hearing or inquiry, if the particular employee has
4 reasonable cause to believe that the employer has violated a state or federal law or regulation.
5 This subsection also applies to employees who disclose such information, or testify about it,
6 regardless of whether the information disclosed or attested to is part of the employee's official
7 job duties.

8 140. *Labor Code* §1102.5(b) precludes an employer in the State of California from
9 retaliating against any employee for disclosing information, or because the employer believes
10 the employee disclosed information, to any government or law enforcement agency, to a
11 person with authority over the employee, or to another employee who has the authority to
12 investigate, discover, or correct the asserted noncompliance or violation of law being raised
13 by the employee.

14 141. *Labor Code* §1102.5(c) precludes an employer in the State of California from
15 retaliating against any employee for refusing to participate in an activity that would violate
16 a state or federal law or regulation.

17 142. *Labor Code* §1105 allows the employee whose rights have been violated under
18 this chapter to maintain a private cause of action for damages against the offending employer.

19 143. *Labor Code* §1106 applies Section 1102.5 and its pertinent subdivisions to
20 public County employers, such as Defendant OC.

21 144. At all times herein mentioned, Defendant OC violated California's anti-
22 whistleblowing retaliation law by retaliating against Plaintiffs CONKLIN for participating
23 in EEO activities, complaints, and investigations, for engaging in or believed to be engaging
24 in "whistleblowing" activities designed to protect crime victims and the public, for testifying
25 before the Orange County grand jury, and for disclosing or attempting to disclose unlawful
26 activities of the OCDA office to the public or to the OCDA itself. The particular facts
27 supporting this claim have been incorporated into this reference.

28

1 145. At all times herein mentioned, the retaliation to which Plaintiffs have been
2 subjected, as more particularly detailed in prior paragraphs of this Complaint, included, but
3 was not limited to, disciplinary measures, including, but not limited to, transfer of assignments
4 within the OCDA office resulting on a loss of pay, placement of false and negative
5 performance assessment in their police personnel file or other personnel files, disciplinary
6 write-ups, marginalization and isolation of Plaintiffs from their coworkers, using Plaintiffs'
7 disability or workers' compensation status as an excuse for limiting or taking away Plaintiffs'
8 critical job responsibilities, putting Plaintiff CONKLIN on an administrative leave with pay as
9 a method of punishment and as a prelude to termination that will occur after his protected
10 complaints and/or protected activities are investigated or resolved in a court proceeding,
11 terminating or causing Plaintiff SANTOS' employment and, and violating the law by not
12 providing them with the protections afforded by the POBRA and by not providing them
13 with traditional due process hearing procedures.

14 146. As a proximate result of Defendant OC's violation of *Labor Code* §§1102.5,
15 et seq., Plaintiffs have sustained, and will continue to sustain for a period of time in the future,
16 economic and non-economic damages in an amount according to proof at the trial of this
17 action.

18 147. Plaintiffs' protected activities and complaints were for the public good and not
19 for a personal benefit. Therefore, Plaintiffs pray for an award of attorney's fees pursuant to
20 the Private Attorney General Doctrine contained in *Code of Civil Procedure* §1021.5.

21
22 **FIFTH CAUSE OF ACTION**

23 **(Violations of the POBRA Administrative Appeal Procedures—**
24 **Brought By Plaintiffs CONKLIN and SANTOS— *Government***
25 ***Code* §§3301-3312— Against Defendant OC and DOES 1 Through**
26 **20, inclusive).**

27 148. Plaintiffs reallege and incorporate herein those matters contained in
28 paragraphs 1 through 147 as though fully set forth.

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

1 149. At all times herein mentioned, *Government Code* §§3301-3312 were in
2 full force and effect. This statutory scheme is known as the Public Safety Officers Procedural
3 Bill of Rights (POBRA).

4 150. Plaintiffs, at all times herein mentioned, were peace officers pursuant to
5 *Penal Code* §830.1 and were covered under the POBRA provisions.

6 151. The OCDA, at all times herein mentioned, was a law enforcement agency to
7 which the POBRA provisions applied.

8 152. Pursuant to the POBRA provisions, Plaintiffs, as peace officers, were entitled
9 to the opportunity for an administrative appeal in the event a punitive action was taken against
10 them. This administrative appeal is a due process procedure in which Plaintiffs were each
11 entitled to the full panoply of due process protections in a hearing in which the alleged
12 punitive actions of their employer against them could be challenged in a Board of Rights
13 hearing or in the Superior Court of the State of California.

14 153. Pursuant to POBRA provisions, a “punitive action” is an adverse employment
15 action consisting of one or more of the following: Dismissal, suspension, demotion, or
16 transfer of assignments for purposes of punishment.

17 154. At all times herein mentioned, Plaintiff CONKLIN has suffered the following
18 “punitive actions” for which he was not provided the opportunity for an administrative appeal
19 hearing: Suspension, demotion, and transfer of assignments for purposes of punishment.

20 155. At all times herein mentioned, Plaintiff SANTOS has suffered the following
21 “punitive actions” for which he was not provided the opportunity for an administrative
22 appeal hearing: Demotion, transfer of assignments for purposes of punishment, and dismissal.

23 156. At all times herein mentioned, Plaintiffs allege that the punitive actions which
24 they have sustained were malicious under POBRA provisions. Therefore, Plaintiffs each
25 pray for the following relief allowed under pertinent POBRA provisions: actual economic and
26 non-economic damages, attorney’s fees, appropriate injunctive relief to remedy the situation
27 and to prevent similar violations as to other OCDA Peace officer employees, and a penalty of
28 up to \$25,000 for each respective POBRA violation committed by Defendant OC.

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

1 WHEREFORE, Plaintiffs pray for the following relief:

2 On the First And Second Causes of Action:

- 3 1. For compensatory damages in an amount according to proof.
4 2. For attorney's fees and expenses pursuant to 42 U.S.C. Sections 1983, et seq.
5 3. For punitive damages against the individual defendants named by Plaintiff
6 CONKLIN in his First Cause of Action and for punitive damages against
7 the individual defendants named by Plaintiff SANTOS in his Second Cause of
8 Action.

9 On the Third Cause of Action:

- 10 1. For compensatory damages in an amount according to proof.
11 2. For attorney's fees and expenses pursuant to 42 U.S.C. Sections 1983, et seq.

12 On the Fourth Cause of Action:

- 13 1. For compensatory and general damages according to proof.
14 2. For attorney's fees and expenses under the Private Attorney General Doctrine
15 of *Code of Civil Procedure* §1021.5, but only if Plaintiff is the prevailing party in this action.

16 On the Fifth Cause of Action:

- 17 1. For actual damages, both economic and non-economic.
18 2. For reasonable attorney's fees.
19 3. For injunctive relief to remedy current violations and to prevent similar
20 violations from occurring in the future.
21 4. For the statutory penalty of up to \$25,000 for each POBRA violation.

22 On All Causes of Action:

- 23 1. For any prejudgment interest where allowed in an amount according to proof.
24 2. For costs of the suit herein incurred.
25 3. For such other and further relief as this court may deem proper and just.

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1 Dated: March 9, 2018

LAW OFFICES OF JOEL W. BARUCH, PC

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By Joel W. Baruch
Joel W. Baruch, Attorney for Plaintiffs

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6

DEMAND FOR JURY TRIAL

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1. Plaintiffs herein demand a trial by jury.

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Dated: March 9, 2018

LAW OFFICES OF JOEL W. BARUCH, PC

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By Joel W. Baruch
Joel W. Baruch, Attorney for Plaintiff

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