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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Erika Engel, Deputy Clerk

5 Attorney for Plaintiff
6 ANDRÉ CHARTRAND

7
8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**
9 **CENTRAL DIVISION**

10
11 ANDRE CHARTRAND, an individual,
12 Plaintiff,

13 v.

14 SOLARFLARE COMMUNICATIONS,
INC., a Delaware Corporation; RUSSELL
15 STERN, an individual; and DOES 1-25,
16 inclusive,

17 Defendants.

CASE NO. 37-2020-00008183-CU-WT-CTL

COMPLAINT FOR DAMAGES

- (1) RETALIATION (Gov. Code § 12940)
(2) FAILURE TO PREVENT AND
REMEDY RETALIATION (Gov. Code §
12940)
(3) LABOR CODE § 1102.5(b)
(4) LABOR CODE § 1102.5(c)
(5) WRONGFUL TERMINATION IN
VIOL. OF PUBLIC POLICY
(6) LABOR CODE §§ 201-202
(7) LABOR CODE § 226
(8) DEFAMATION PER SE
(9) DECLARATORY RELIEF
(10) [RESERVED]

[DEMAND FOR JURY TRIAL]

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22 Plaintiff ANDRE CHARTRAND ("Plaintiff") alleges against Defendant SOLARFLARE
23 COMMUNICATIONS, INC. ("Solarflare") and RUSSELL STERN ("Stern") as follows:

24 **I. THE PARTIES AND JURISDICTION**

25 1. The plaintiff in this action is ANDRE CHARTRAND ("Plaintiff"). At all times
26 mentioned herein, and at the time each of Plaintiff's causes of action arose, Plaintiff Andre
27 Chartrand was an individual who resided in and was domiciled in San Diego County, California.
28

1 2. At all times relevant herein, and at the time each of Plaintiff’s causes of action
2 arose, Defendant SOLARFLARE COMMUNICATIONS, INC. (“Solarflare”) was a Delaware
3 corporation, with an office in, and doing business in the Sorrento Valley in the County of San
4 Diego, with its principal place of business at 7505 Irvine Center Drive, Suite 100, Irvine,
5 California 92618. At all times relevant herein Solarflare was Plaintiff’s employer.

6 3. At all times relevant herein, and at the time each of Plaintiff’s causes of action
7 arose, Defendant RUSSELL STERN (“Stern”) was an individual, domiciled and residing in
8 California, but who now may be domiciled in Florida. Stern was the CEO of Solarflare.

9 4. Plaintiff is unaware of the true names and capacities of Defendants sued herein as
10 DOES 1 through 25, inclusive, and for that reason sues said Defendants by such fictitious names.
11 Based on information and belief, each of the Defendants designated herein as a DOE is legally
12 responsible in some manner for the events and happenings herein referred to, and/or proximately
13 and actually caused injuries and damages to the Plaintiff, as alleged herein. As necessary, and as
14 discovery continues, Plaintiff will file and serve one or more amendments to this pleading upon
15 learning the true names and identities of these DOE Defendants.

16 5. Plaintiff is informed and believes, and on that basis alleges, that each Defendant
17 and each DOE defendant are and were the agents, employees, partners, joint venture, associate,
18 alter ego, and representative of each of the other named Defendants, and each other, and are
19 persons and/or entities that participated in, caused or committed the wrongful acts complained of
20 throughout this Complaint.

21 6. Plaintiff is further informed and believes, and on that basis alleges that, each of the
22 Defendants and DOE defendants are a “shell” created in an attempt to insulate each of the
23 remaining Defendants from liability, and operate/operated under the direction, control,
24 management, and supervision of each of the other Defendants, with the other Defendants at all
25 times ratifying, consenting to, and authorizing the actions and/or inactions of the Defendants and
26 DOE defendants. Plaintiff is also informed and believes, and on that basis alleges, that each of
27 the Defendants are the agents, employees, employers, and/or representatives of each other and
28 ratified, consented to, and/or authorized the acts of each other.

1 7. Plaintiff is further informed and believes, and on that basis alleges that,
2 Defendants, including the DOE defendants, conspired to commit the acts alleged herein, such
3 actual or implied agreement being made verbally, in writing, or by way of their conduct. Each
4 Defendant and DOE defendant was aware of the planned conduct and scheme herein, and each
5 Defendant and DOE defendant agreed to and implemented the conduct to unlawfully deprive the
6 State of funds owed and belonging to it. All Defendants and DOE defendants are jointly and
7 severally liable for damages resulting from their conspiracy.

8 8. Venue is proper in this Court, which has jurisdiction over all defendants for the
9 acts and omissions alleged herein, as the obligation or liability arose from within this County, and
10 Defendants do business in this County. Venue is therefore proper in this Court, which has
11 jurisdiction over all defendants for the acts and omissions alleged herein, and the damages
12 resulting from Defendants' misconduct is greater than \$25,000.

13 **II. FACTUAL ALLEGATIONS**

14 9. Defendant Solarflare is an international leader in application-optimized network
15 solutions, including Network Interface Cards (NICs). It is the global leader in ultra-low latency
16 NICs for electronic trading, with over 2,000 customers worldwide, comprising 95% of the
17 exchanges, large banks and High-Frequency Traders (HFTs). By the time of Plaintiff's unlawful
18 termination, Solarflare had domestic offices in Irvine and San Diego, as well as international
19 offices in Cambridge, U.K., and India.

20 10. Prior to joining Solarflare, Plaintiff had established himself as a preeminent
21 engineer across a lengthy and impressive career. From 1985 to mid-2012, when he joined
22 Solarflare, Plaintiff had been the Director of Engineering, or Vice President of Engineering, at
23 seven different companies, where he regularly oversaw design activities and scores of engineers
24 in design centers worldwide, ultimately leading several companies to a successful acquisition. He
25 also headed the engineering team at a company that successfully went to an IPO in December
26 2007.

27 11. In August 2012, Solarflare hired Plaintiff as its Vice President of Very Large Scale
28 Integration (or VLSI) Engineering, to "be part of the Executive Team." In this role, Plaintiff

1 essentially managed the chip design team. Solarflare hired Plaintiff at a multi-six figure salary,
2 and also granted him 700,000 stock options in the company's common stock. By the time of
3 Plaintiff's eventual wrongful discharge, each of these 700,000 stock options had long-since
4 vested.

5 12. Plaintiff quickly demonstrated superior performance at Solarflare. As a result, in
6 April 2013, Solarflare promoted him to Vice President of Engineering, now reporting directly to
7 Defendant Stern. The company also increased Plaintiff's salary, and granted him an additional
8 550,000 stock options. Each of these 550,000 stock options vested by the time of his wrongful
9 discharge.

10 13. Over time, Plaintiff continued to exhibit excellent performance. He oversaw all
11 engineering at the company, and headed an international engineering team of approximately 140
12 employees (out of 200 total employees at the company) in offices in California, the United
13 Kingdom, and India. Under Plaintiff's stewardship, company revenue increased from
14 \$20,000,000 per year, to \$50,000,000 per year.

15 14. As a result of Plaintiff's exemplary work, Solarflare gave him periodic salary
16 increases, to the point his salaried compensation maxed out, and, based on information and belief,
17 and on that basis it is alleged, that he had the third-highest salary at Solarflare. Solarflare also
18 continued to award Plaintiff extensive stock options. In February 2014, Solarflare granted him an
19 additional 1,250,000 stock options. In February 2015, it awarded him another 150,000 stock
20 options. In August 2017, it awarded him another 425,000 Solarflare stock options. By the time
21 of his wrongful termination in July 2019, Plaintiff owned 3,075,000 options in Solarflare
22 common stock, all or nearly all of which had vested by that time. This made him approximately
23 the fifth-largest single holder of Solarflare stock options as of about 2019. Not surprisingly,
24 Plaintiff, then 62 years old, saw his stock options in the company as his nest egg for retirement.

25 15. Around 2016, Defendant Stern secretly embroiled the company in a project
26 (dubbed the "Secret Project") involving illegal international espionage. As part of this Secret
27 Project, Stern agreed with a government intelligence agency to design Solarflare NICs embedded
28 with spy software for transmission to Chinese customers. Solareflare's software would then

1 secretly return illicitly collected data back to the intelligence agency. This project involved
2 international espionage in violation of numerous laws. Solarflare received millions of dollars for
3 this design work. However, to conceal this activity from the company’s employees, the public,
4 and the Board of Directors, Stern hid this revenue in Solarflare’s financial statements under a
5 misnomer related to “consulting.”

6 16. Because of the project’s sensitive nature, only a small handful of Solarflare
7 employees ever knew about and/or worked on the Secret Project. Upon information and belief,
8 Stern never informed the Solarflare Board of Directors about Solarflare’s involvement in the
9 Secret Project.

10 17. Around this same time, Stern implored Plaintiff – then a Canadian citizen – to
11 obtain American citizenship. At Stern’s behest, Plaintiff did, and became a U.S. citizen in April
12 2017. After that, Stern disclosed the Secret Project to Plaintiff. Plaintiff objected to Solarflare’s
13 involvement with the project and expressed his extreme discomfort with it and its likely illegal
14 nature. However, CEO Stern insisted the project proceed. He also ordered that Plaintiff not talk
15 to anyone about the project but Stern, and that there be no phone calls, texts or emails about it.
16 Over time, the project apparently continued behind the scenes with no involvement from or by
17 Plaintiff.

18 18. Then, in about mid-to-late 2018, Stern suddenly asked Solarflare’s United
19 Kingdom IT department for a copy of Solarflare’s entire proprietary source code (often called the
20 “database”), including that of the Secret Project. This request sent off alarm bells. This was the
21 most pivotal, proprietary, and secret data in the company, and there was seemingly no rational
22 reason for the request. The United Kingdom office immediately contacted Plaintiff, who then
23 immediately confronted Stern in his Irvine office. He asked Stern why he was seeking the
24 database. Stern lied, claiming Solarflare’s preeminent venture capital investor wanted it for a
25 backup (a mistruth later confirmed). Plaintiff responded that there were already off-site backups
26 in place. Suspecting prevarication, Plaintiff pressed Stern, asking “is this for your secret
27 project?” Plaintiff, who by then had been named Solarflare’s Chief Information Security Officer
28 (CISO), pointedly told Stern he would not do anything illegal, and that “I am the acting CISO and

1 I'm not going to jail for you or this project" (or words to that effect). Stern heatedly responded
2 that "I'm the CEO and I can do whatever I want." At that, the interaction ended. But, from that
3 time onwards, Stern had it out for Plaintiff. Plaintiff had firmly refused to engage in illegal
4 activity and complained about same, making these points firmly known. Fearful Plaintiff had not
5 only the ability but intent to expose Stern's Secret Project, Defendant Stern endeavored on a
6 campaign of retaliation against Plaintiff.

7 19. Stern had a reputation for eccentric behavior and a maverick attitude. He
8 habitually played guitar in his office with the door open – often with non-employee friends –
9 while others were working. He also regularly vaped in the Solarflare office common spaces.
10 Although employees, including Plaintiff, complained about this conduct, Stern refused to stop,
11 relying on his rank. Frighteningly, Stern also carried a gun at the office from time-to-time.
12 Plaintiff raised this illegal behavior, again drawing Stern's animosity. However, Stern again
13 refused to give in and continued this practice.

14 20. In 2018, Solarflare partnered with its eventual purchaser, Xilinx, Inc., on a cloud-
15 based project. Although one project milestone was missed, others were hit, and Xilinx was
16 impressed with Solarflare's operations. Not long after Plaintiff confronted Stern about the Secret
17 Project, Solarflare reached a deal-in-principal to be purchased by Xilinx for hundreds of millions
18 of dollars. As the head of engineering for Solarflare – who had helped increase annual revenues
19 from \$20M to \$50M per year during his 6.5-year tenure – Plaintiff played a key role in
20 positioning the company for this lucrative sale. Stern, however, did not see it that way and
21 intended to make Plaintiff pay for his prior confrontations.

22 21. In or around February 2019, Stern maliciously and falsely singled out Plaintiff,
23 blaming him for alleged company shortcomings which Stern claimed cost Solarflare millions of
24 dollars off its eventual purchase price. This was all done by Stern in an effort to facilitate
25 Plaintiff's pretextual termination from Solarflare and to deprive him of highly valuable
26 compensation associated with his millions of stock options and various bonuses associated with
27 the company acquisition, including the so-called "Special Bonus Plan" and "Key Employee
28 Bonus," as well as to maliciously and falsely disparage Plaintiff's reputation with Xilinx out of

1 pure hatred and ill will.

2 22. Around this same time, Stern lobbied the Board of Directors to allocate huge
3 swathes, if not all of the employees' portion of the sales proceeds, to him alone. To that, the
4 Board resisted. However, based on information and belief, Stern then proposed a "Special Bonus
5 Plan." Instead of compensating Solarflare employees proportionally to their stock option
6 holdings, he proposed a *de minimis* stock option payout, with the majority of employee
7 compensation coming from a purely discretionary bonus, which he called the "Special Bonus
8 Plan." This plan was partially designed to ensure Stern appropriated as much money for himself
9 as possible, at the employee's expense. Stern even later lied to the employees, claiming the
10 Special Bonus Plan came about because he didn't think there was enough value in the stocks, so
11 he did it to convert the stock so employees could get money. But the Special Bonus Plan was
12 also created and employed for another illicit purpose: to deprive Plaintiff of vast sums of
13 compensation in retaliation for his resistance to Stern's complaints, including those about the
14 illegal secret project. The Board ratified and approved Stern's Special Bonus Plan proposal. It
15 also approved a Key Employee Bonus – a discretionary bonus pool designed to award important,
16 high-level employees, like Plaintiff, for their contribution to the company's eventual sale.

17 23. However, when it came time to allocate monies from the Special Bonus Plan and
18 Key Employee Bonus Plan, Stern falsely and maliciously disparaged Plaintiff to the Board of
19 Directors (and Xilinx) out of hatred and ill will in a retaliatory attempt to completely block
20 Plaintiff's participation in either program, despite his vast stock option holdings and undeniable
21 successes as Solarflare's long-time engineering head. In fact, Stern argued to the Board of
22 Directors that Plaintiff should receive *nothing*, maliciously and falsely bad-mouthing him based
23 on purely pretextual arguments. The Board of Directors then adopted and ratified Stern's
24 malicious retaliatory positions, and, as a result, Plaintiff received a dramatically lower amount for
25 the Special Bonus Plan than he properly should, or otherwise would have. In fact, Plaintiff's
26 various subordinates received far more compensation from the Special Bonus Plan, both in terms
27 of gross sums and relative receipt proportional to their respective stock option holdings.

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1 24. Moreover, based on information and belief, and on that basis it is alleged that, at
2 Stern's insistence, the Board approved an award of \$0 to Plaintiff as part of the Key Employee
3 Bonus, and/or Stern falsely and maliciously disparaged Plaintiff to Xilinx with the malicious
4 intent of depriving Plaintiff's participation in that program and destroying his employment and/or
5 employment opportunities. Stern did this out of hatred and ill will for Plaintiff, and in retaliation
6 for his aforementioned complaints. Meanwhile, Stern received a large factual award, and his
7 other contemporaries also received six- and seven-figure awards, while Plaintiff received nothing.

8 25. In addition, in the lead-up to Xilinx's acquisition, and during the sale process,
9 Stern began maliciously polluting Plaintiff's reputation with Xilinx in a vexatious effort to
10 prevent Plaintiff from transitioning to Xilinx post-acquisition. Stern began relaying to Xilinx,
11 amongst other things, that Plaintiff was allegedly blaming Xilinx for the missed milestone in
12 2018. This was false. It was a false rumor Stern maliciously attributed to Plaintiff to engender
13 Xilinx's animosity towards Plaintiff and result in his layoff from Solarflare and non-retention by
14 Xilinx. Stern also instructed Plaintiff to tell Xilinx that Solarflare was being courted for purchase
15 by Alibaba, in an effort to increase Solarflare's perceived valuation and attractiveness in the
16 marketplace. Although this did not appear to be an accurate representation and, at the very least,
17 was confidential information not to be shared outside Solarflare, Plaintiff did so because Stern
18 ordered him to. Later, Stern then conceded to "throwing [Plaintiff] under the bus" with Xilinx.
19 Based on information and belief, and on that basis it is alleged, that Stern told Xilinx that the
20 information was confidential and that Plaintiff should never have conveyed that information to
21 them, thus again falsely and maliciously disparaging Plaintiff to Xilinx. This was all a malicious
22 pretext by Stern intended to make Plaintiff appear inept, and to maliciously trigger Plaintiff's
23 termination and non-retention.

24 26. In or around April 2019, Solarflare's sale was announced. However, little
25 information on the details of the sale were released. Shortly thereafter, in about May 2019, Stern
26 received millions in payouts from the sale, and then immediately disappeared without notice to
27 staff or his colleagues. For months, few people knew where he went. Attempts to contact him, or
28 get a response from him, went unanswered. Only later did he surface across the country in

1 Florida, apparently having relocated.

2 27. In about mid-July 2019, Stern informed Plaintiff about his bonuses. Plaintiff was
3 shocked, and challenged Stern about this and the retaliatory reasons supposedly “justifying” the
4 amounts. Stern responded, mainly claiming it was due to “missed schedules” on a prior
5 Solarflare project (25GB). This was blatant equivocation and pretext for various reasons. In fact,
6 multiple other individuals equally or more involved with that project received *more* in the Special
7 Bonus Plan and Key Employee Bonus than he did. Plaintiff vehemently objected to his
8 allocations which liquidated and supplanted his millions of stock options.

9 28. Then, in or around July 2019, Solarflare presented Plaintiff (and the aggrieved
10 employees) with an agreement entitled the July 2019 Option Waiver Agreement. This document
11 supposedly provided his “consent” to receive compensation for his vested stock options and for
12 participation in the Special Bonus Plan. However, it was not interested in voluntary consent. It
13 was meant to coerce acceptance of the agreement (including cancellation of the stock options)
14 under extreme financial duress. The document stated that Plaintiff (and the aggrieved
15 employees’) stock options had been “canceled in connection with the [acquisition] closing,” but
16 that he could receive some payment for those vested in-the-money options through, amongst
17 other things, the Special Bonus Plan, “*if and only if*” he signed the agreement, which purported to
18 contain an illegal and unenforceable release and choice-of-law provision. In other words,
19 Solarflare attempted to condition payment for Plaintiff’s millions of vested stock options (i.e.,
20 wages) – as well as those of the other aggrieved Solareflare employees – on consent to the
21 agreement and its purported release and choice-of-law provision. These acts, and these
22 provisions, are illegal, unenforceable, and in violation of Labor Code sections 206, 206.5, and
23 925.

24 29. Solarflare gave Plaintiff and the aggrieved employees just days to consider this
25 Hobbesian dilemma – either agree to an illegal arrangement conditioning payment for his
26 retirement funds on signing the document, or risk their entire forfeiture. Under immense financial
27 duress, and having absolutely no choice but to sign in order to protect his vast vested stock
28 options, Plaintiff signed this agreement. Other aggrieved employees faced the same coercive,

1 illegal dilemma, and, under immense financial duress, likewise signed the agreement and its
2 unlawful, unenforceable provisions. Solarflare needed these agreements because they had been
3 required by in order to complete the lucrative sale of Xilinx.

4 30. At the same time, Solarflare also informed Plaintiff he was being laid off effective
5 July 31, 2019. Stern’s plan – adopted, promoted, and ratified by Solarflare – was complete. Of
6 Solarflare’s approximately 140 worldwide engineers, Plaintiff was the *only* one selected for layoff
7 at that time. This was a retaliatory termination motivated by Plaintiff’s various protected
8 complaints.

9 31. On or about January 30, 2020, Plaintiff filed an administrative complaint against
10 Defendants with the California Department of Fair Employment and Housing, and received an
11 immediate “Right-to-Sue” letter from said department the same day. This Complaint is timely
12 filed pursuant to that letter, as are all causes of action.

13 32. On or about January 29, 2020, Plaintiff submitted written notice to the California
14 Labor and Workforce Development Agency (“LWDA”) and Defendant Solarflare pursuant to
15 Labor Code section 2699.3(a) identifying specific Labor Code provisions violated, including the
16 facts and theories supporting the alleged violations, and paid the required \$75 filing fee. In the
17 event the LWDA does not investigate the allegations and send notice of same within 60 calendar
18 days of Plaintiff’s notice, or if the LWDA does not provide such notice within 65 calendar days
19 of Plaintiff’s notice, Plaintiff is entitled to amend this Complaint as a matter of right to add a
20 claim under the California Labor Code’s Private Attorneys’ General Act (“PAGA”), and intends
21 on doing same. (Lab. Code §§ 2699.3(a)(2)(A), (C).)

22 **FIRST CAUSE OF ACTION**

23 **Retaliation in Violation of FEHA**

24 **(Against Defendant Solarflare)**

25 33. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
26 material allegations set out in paragraphs 1-32.

27 34. At all times mentioned herein, the California Fair Employment and Housing Act
28 (“FEHA”) was in full force and effect, and applied to Defendant Solarflare, as it regularly

1 employed five or more persons. The FEHA makes it illegal for any person to retaliate against an
2 employee for complaining about illegal and/or retaliatory conduct and other protected activity.

3 35. Plaintiff was at all times an exemplary employee. Defendant Solarflare retaliated
4 against Plaintiff for the above-noted complaints and opposition by, amongst other things, by
5 artificially reducing Plaintiff's award under the Special Bonus Plan, denying him participation in
6 the Key Employee Bonus program, and, amongst other things, wrongfully terminating his
7 employment.

8 36. Plaintiff's protected activity was a substantial motivating factor for these various
9 adverse employment acts, which caused him substantial financial harm.

10 37. As a proximate result of the aforesaid acts, Defendant Solarflare caused Plaintiff to
11 suffer actual, consequential and incidental financial harm, including, but not limited to, salary
12 loss, loss of benefits, loss of bonuses, lost stock options and value related thereto, lost incentive
13 compensation, loss of employment related opportunities in his field and damage to his
14 professional reputation, all in an amount to be proven at time of trial. Plaintiff is also entitled to
15 prejudgment interest on said amounts.

16 38. As a proximate result of Defendant Solarflare's wrongful acts, Plaintiff has
17 suffered and continues to suffer emotional distress, humiliation, mental anguish and
18 embarrassment, and seeks damages for same in an amount to be proven at time of trial.

19 39. As a proximate result of Defendant Solarflare's wrongful acts, Plaintiff has also
20 been forced to hire an attorney to vindicate his claims. Plaintiff has incurred and will continue to
21 incur attorney's fees and costs in prosecution of these claims, and is entitled to recover attorney's
22 fees and costs per Gov. Code § 12965(b) and Labor Code section 218.5(a).

23 40. The actions taken against Plaintiff were carried out and/or ratified and/or
24 authorized by officers, directors, and other managing agents of Solarflare. Defendant Solarflare's
25 foregoing alleged conduct and omissions were intentional, malicious, oppressive, wanton,
26 undertaken with bad faith, and/or with conscious disregard of Plaintiff's rights, and ratified and
27 consented to by the officers, directors, and other managing agents of Defendant Solarflare, so as
28 to justify an award of exemplary and punitive damages against Solarflare in an amount to be

1 proven at trial.

2 **SECOND CAUSE OF ACTION**

3 **Failure to Prevent Retaliation in Violation of FEHA**

4 **(Against Defendant Solarflare)**

5 41. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
6 material allegations set out in paragraphs 1-40.

7 42. At all relevant times, FEHA imposed a duty on Defendant Solarflare to take any
8 and all reasonable steps necessary to prevent retaliation from occurring. Defendants failed to take
9 all such reasonable steps to prevent the retaliatory acts identified herein, and in fact, ratified,
10 endorsed and authorized such acts. By failing and refusing to take all reasonable steps necessary
11 to prevent retaliation, but instead, adopting and ratifying the aforementioned acts, Defendant
12 Solarflare violated FEHA's Government Code section 12940(k) and this directly caused Plaintiff
13 to suffer harm in the manners set forth herein.

14 43. As a proximate result of the aforesaid acts, Defendant Solarflare caused Plaintiff to
15 suffer actual, consequential and incidental financial harm, including, but not limited to, salary
16 loss, loss of benefits, loss of bonuses, lost stock options and value related thereto, lost incentive
17 compensation, loss of employment related opportunities in his field and damage to his
18 professional reputation, all in an amount to be proven at time of trial. Plaintiff is also entitled to
19 prejudgment interest on said amounts.

20 44. As a proximate result of Defendant Solarflare's wrongful acts, Plaintiff has
21 suffered and continues to suffer emotional distress, humiliation, mental anguish and
22 embarrassment, and seeks damages for same in an amount to be proven at time of trial.

23 45. As a proximate result of Defendant Solarflare's wrongful acts, Plaintiff has also
24 been forced to hire an attorney to vindicate his claims. Plaintiff has incurred and will continue to
25 incur attorney's fees and costs in prosecution of these claims, and is entitled to recover attorney's
26 fees and costs per Gov. Code § 12965(b) and Labor Code section 218.5(a).

27 46. The actions taken against Plaintiff were carried out and/or ratified and/or
28 authorized by officers, directors, and other managing against of Solarflare. Defendant

1 Solarflare’s foregoing alleged conduct and omissions were intentional, malicious, oppressive,
2 wanton, undertaken with bad faith, and/or with conscious disregard of Plaintiff’s rights, and
3 ratified and consented to by the officers, directors, and other managing agents of Defendant
4 Solarflare, so as to justify an award of exemplary and punitive damages against Solarflare in an
5 amount to be proven at trial.

6 **THIRD CAUSE OF ACTION**

7 **Violation of Labor Code § 1102.5(b)**

8 **(Against Defendant Solarflare)**

9 47. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
10 material allegations set out in paragraphs 1-46.

11 48. At all relevant times, Labor Code section 1102.5(b) prohibited Solarflare, or any
12 person acting on behalf of an Solarflare, from retaliating against an employee for disclosing
13 information to a person with authority over the employee who has the authority to investigate,
14 discover, or correct the violation or noncompliance, where the employee has reasonable cause to
15 believe that the information discloses a violation law, or where the employer believes that an
16 employee has disclosed or will disclose a violation of law.

17 49. Plaintiff made the above-noted complaints about reasonably perceived illegality to
18 Solarflare and its officers and managing agents. Defendant Solarflare then retaliated against
19 Plaintiff for the above-noted complaints and opposition by, amongst other things, by artificially
20 reducing Plaintiff’s award under the Special Bonus Plan, denying him participation in the Key
21 Employee Bonus program, and, amongst other things, wrongfully terminating this employment.

22 50. Plaintiff’s protected activity was a substantial motivating factor for these various
23 adverse employment acts, which caused him substantial financial harm. Defendant Solarflare
24 cannot establish by clear and convincing evidence that these adverse acts would have occurred for
25 legitimate, independent reasons even if Plaintiff had not engaged in the aforementioned protected
26 activities. (Lab. Code § 1102.6.)

27 51. As a proximate result of the aforesaid acts, Defendant Solarflare caused Plaintiff to
28 suffer actual, consequential and incidental financial harm, including, but not limited to, salary

1 loss, loss of benefits, lost stock options and value related thereto, lost incentive compensation,
2 loss of employment related opportunities in his field and damage to his professional reputation,
3 all in an amount to be proven at time of trial. Plaintiff is also entitled to prejudgment interest on
4 said amounts.

5 52. As a proximate result of Defendant Solarflare's wrongful acts, Plaintiff has
6 suffered and continues to suffer emotional distress, humiliation, mental anguish and
7 embarrassment, and seeks damages for same in an amount to be proven at time of trial.

8 53. As a proximate result of Defendant Solarflare's wrongful acts, Plaintiff has also
9 been forced to hire an attorney to vindicate his claims. Plaintiff has incurred and will continue to
10 incur attorney's fees and costs in prosecution of these claims, and is entitled to recover attorney's
11 fees and costs pursuant to Labor Code section 218.5(a), Civil Code section 1102.5, and any other
12 applicable provision of law.

13 54. The actions taken against Plaintiff were carried out and/or ratified and/or
14 authorized by officers, directors, and other managing against of Solarflare. Defendant
15 Solarflare's foregoing alleged conduct and omissions were intentional, malicious, oppressive,
16 wanton, undertaken with bad faith, and/or with conscious disregard of Plaintiff's rights, and
17 ratified and consented to by the officers, directors, and other managing agents of Defendant
18 Solarflare, so as to justify an award of exemplary and punitive damages against Solarflare in an
19 amount to be proven at trial.

20 **FOURTH CAUSE OF ACTION**

21 **Violation of Labor Code § 1102.5(c)**

22 **(Against Defendant Solarflare)**

23 55. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
24 material allegations set out in paragraphs 1-54.

25 56. At all relevant times, Labor Code section 1102.5(c) prohibited Solarflare, or any
26 person acting on behalf of an Solarflare, from retaliating against Plaintiff for refusing to
27 participate in an activity that would result in a violation of law.

28 ///

1 57. Plaintiff made the above-noted complaints refusing to participate in an illegal
2 espionage scheme in violation of numerous laws and/or one plaintiff reasonably believed to be a
3 violation of various laws. Defendant Solarflare then retaliated against Plaintiff for the above-
4 noted complaints and opposition by, amongst other things, by artificially reducing Plaintiff's
5 award under the Special Bonus Plan, denying him participation in the Key Employee Bonus
6 program, and, amongst other things, wrongfully terminating his employment.

7 58. Plaintiff's protected activity was a substantial motivating factor for these various
8 adverse employment acts, which caused him substantial financial harm. Defendant Solarflare
9 cannot establish by clear and convincing evidence that these adverse acts would have occurred for
10 legitimate, independent reasons even if Plaintiff had not engaged in the aforementioned protected
11 activities. (Lab. Code § 1102.6.)

12 59. As a proximate result of the aforesaid acts, Defendant Solarflare caused Plaintiff to
13 suffer actual, consequential and incidental financial harm, including, but not limited to, salary
14 loss, loss of benefits, lost stock options and value related thereto, lost incentive compensation,
15 loss of employment related opportunities in his field and damage to his professional reputation,
16 all in an amount to be proven at time of trial. Plaintiff is also entitled to prejudgment interest on
17 said amounts.

18 60. As a proximate result of Defendant Solarflare's wrongful acts, Plaintiff has
19 suffered and continues to suffer emotional distress, humiliation, mental anguish and
20 embarrassment, and seeks damages for same in an amount to be proven at time of trial.

21 61. As a proximate result of Defendant Solarflare's wrongful acts, Plaintiff has also
22 been forced to hire an attorney to vindicate his claims. Plaintiff has incurred and will continue to
23 incur attorney's fees and costs in prosecution of these claims, and is entitled to recover attorney's
24 fees and costs per the Labor Code, Labor Code section 218.5(a), Civil Code section 1102.5, and
25 any other applicable provision of law.

26 62. The actions taken against Plaintiff were carried out and/or ratified and/or
27 authorized by officers, directors, and other managing against of Solarflare. Defendant
28 Solarflare's foregoing alleged conduct and omissions were intentional, malicious, oppressive,

1 wanton, undertaken with bad faith, and/or with conscious disregard of Plaintiff's rights, and
2 ratified and consented to by the officers, directors, and other managing agents of Defendant
3 Solarflare, so as to justify an award of exemplary and punitive damages against Solarflare in an
4 amount to be proven at trial.

5 **FIFTH CAUSE OF ACTION**

6 **Wrongful Termination in Violation of Public Policy**

7 **(Against Defendant Solarflare)**

8 63. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
9 material allegations set out in paragraphs 1-62.

10 64. At all relevant times, the public policy of California, as expressed and codified in
11 various places, including, but not limited to, the FEHA and Labor Code, was to prohibit
12 employers from retaliating against any individual for engaging in and making protected
13 complaints. Defendant Solarflare's wrongful termination of Plaintiff for the reasons mentioned
14 herein therefore violated the express public policy of the State of California.

15 65. Plaintiff's protected activity was a substantial motivating factor for these various
16 adverse employment acts, which caused him substantial financial harm.

17 66. As a proximate result of the aforesaid acts, Defendant Solarflare caused Plaintiff to
18 suffer actual, consequential and incidental financial harm, including, but not limited to, salary
19 loss, loss of benefits, lost stock options and value related thereto, lost incentive compensation,
20 loss of employment related opportunities in his field and damage to his professional reputation,
21 all in an amount to be proven at time of trial. Plaintiff is also entitled to prejudgment interest on
22 said amounts under Civil Code sections 3287 and 3288 and any other law providing for
23 prejudgment interest.

24 67. As a proximate result of Defendant Solarflare's wrongful acts, Plaintiff has
25 suffered and continues to suffer emotional distress, humiliation, mental anguish and
26 embarrassment, and seeks damages for same in an amount to be proven at time of trial.

27 68. As a proximate result of Defendant Solarflare's wrongful acts, Plaintiff has also
28 been forced to hire an attorney to vindicate his claims. Plaintiff has incurred and will continue to

1 incur attorney's fees and costs in prosecution of these claims, and is entitled to recover attorney's
2 fees and costs per Civil Code section 1102.5.

3 69. The actions taken against Plaintiff were carried out and/or ratified and/or
4 authorized by officers, directors, and other managing against of Solarflare. Defendant
5 Solarflare's foregoing alleged conduct and omissions were intentional, malicious, oppressive,
6 wanton, undertaken with bad faith, and/or with conscious disregard of Plaintiff's rights, and
7 ratified and consented to by the officers, directors, and other managing agents of Defendant
8 Solarflare, so as to justify an award of exemplary and punitive damages against Solarflare in an
9 amount to be proven at trial.

10 **SIXTH CAUSE OF ACTION**

11 **Wages Not Timely Paid Upon Termination**

12 **(Against Defendant Solarflare)**

13 70. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
14 material allegations set out in paragraphs 1-69.

15 71. At all times set forth herein, Cal. Labor Code sections 201 and 202 provide that,
16 upon separation of employment, the employer must pay the employee all wages within certain
17 time periods, the latest possible period of which shall not exceed 72 hours after discharge. Under
18 California law, all vested (and even unvested, contingent) stock option rights offered as an
19 inducement for an employee to stay on – as provided to Plaintiff here – are “wages” within the
20 meaning of any and all applicable California wage-and-hour law, including, but not limited to,
21 Labor Code sections 201-203 and the Labor Code in general.

22 72. Defendant Solarflare willfully failed to pay Plaintiff all earned wages, including,
23 but not limited to, monies for all vested stock options in Solarflare, at the time of discharge, and
24 there is no reasonable good-faith dispute for having not paid said wages.

25 73. Defendant Solarflare's willful failure to pay Plaintiff these earned wages at the
26 time of discharge, or within 72 hours of leaving Defendant Solarflare's employ, violates Labor
27 Code sections 201 and 202.

28 ///

1 81. Plaintiff seeks attorneys' fees and costs under Labor Code section 226(e)(1).

2 **EIGHTH CAUSE OF ACTION**

3 **(Defamation Per Se)**

4 **(Against Defendant Russell Stern)**

5 82. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
6 material allegations set out in paragraphs 1-81.

7 83. Defendant Stern maliciously and intentionally made the above-noted statements to
8 various individuals, including, but not limited to, various members of the Board of Directors at
9 Solarflare, as well as individuals at Xilinx, and those individuals reasonably understood that the
10 statements were about Plaintiff. These individuals also reasonably understood the statements as
11 tending to directly injure Plaintiff in respect to his office, profession, trade or business, either by
12 imputing to Plaintiff general disqualification in those respects which the office or his occupation
13 peculiarly required, or by imputing something with reference to his office, profession, trade, or
14 business that has a natural tendency to harm him.

15 84. Defendant Stern maliciously and intentionally made these unprivileged statements
16 and failed to use reasonable care to determine their truth or falsity. Defendant Stern either knew
17 them to be untrue, or acted in reckless disregard of their truth or falsity.

18 85. Defendant Stern's statements were published as assertions of fact, not opinion, and
19 interpreted by the recipients as assertions of fact. Moreover, the statements were unprivileged.
20 They were made with malice towards Plaintiff, in that they were motivated by hatred or ill will,
21 and Defendant Stern made these false statements of fact, knowing their falsity and/or published
22 them with no reasonable grounds for believing their truth, and thus acted in reckless disregard of
23 Plaintiff's rights. Defendant Stern also published these statements to third persons who had no
24 need or desire to hear the publications.

25 86. Plaintiff is informed and believes, and on that basis alleges, that Stern's reckless
26 and intentional publications were foreseeably published and republished by him and others,
27 including Defendant Solarflare and Xilinx, and their agents, managing agents, directors, and
28 employees.

1 87. Defendant Stern’s intentionally false, unprivileged statements were intended to
2 harm Plaintiff, and were a substantial factor in causing harm to Plaintiff in the form of harm to his
3 business, trade, and profession, loss of occupational opportunity, loss of employment related
4 opportunities with Xilinx, loss of salary, loss of earning capacity, loss of benefits, loss of
5 incentive compensation, harm to Plaintiff’s reputation, and shame, mortification and hurt feelings.
6 Plaintiff is entitled to and pleads for actual damages caused by Defendant Stern.

7 88. In addition, Defendant Stern’s intentional, false, and unprivileged statements
8 constitute defamation per se, entitling Plaintiff to presumed damages for, amongst other things,
9 compensation for loss of reputation, shame, mortification, and hurt feelings, and pleads for same.

10 89. All of the malicious, defamatory statements were made within one year of the
11 filing date, and/or, were not and could not have been reasonably discovered despite the exercise
12 of reasonable diligence, before Plaintiff’s termination in July 2019. The malicious, defamatory
13 statements were done in secret, outside Plaintiff’s presence. This delayed discovery is well
14 within the applicable statute of limitations, as Plaintiff did not discover, nor could he have
15 reasonably discovered them, prior to his July 2019 termination.

16 90. As a proximate result of Defendant STERN’s wrongful acts, Plaintiff has suffered
17 and continues to suffer emotional distress, humiliation, mental anguish and embarrassment, and
18 seeks damages for same in an amount to be proven at time of trial.

19 91. Defendant Stern’s foregoing alleged conduct and omissions was intentional,
20 malicious, oppressive, wanton, undertaken with bad faith, and/or with conscious disregard of
21 Plaintiff’s rights, so as to justify an award of exemplary and punitive damages against Defendant
22 Stern in an amount to be proven at trial.

23 **NINTH CAUSE OF ACTION**

24 **(Declaratory Relief)**

25 **(Against Defendant Solarflare)**

26 92. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
27 material allegations set out in paragraphs 1-91.

28 93. An actual justiciable controversy exists between the Parties. Plaintiff asserts, and,

1 on information and belief, and on that basis alleges, that Defendant Solarflare denies, that a
2 purported release contained in the above-mentioned July 2019 Option Waiver Agreement is
3 invalid under Labor Code sections 206 and 206.5. Furthermore, Plaintiff asserts, and, on
4 information and belief, and on that basis alleges, that Defendant Solarflare denies, that a
5 purported choice-of-law provision in the Option Waiver Agreement is also invalid under Labor
6 Code section 925(a)(2).

7 94. A judicial declaration is necessary to resolve said controversies in order that the
8 parties can ascertain their rights and duties under the aforementioned document.

9 95. Plaintiff is entitled to a judicial declaration that a purported release contained in
10 the above-mentioned July 2019 Option Waiver Agreement is invalid under Labor Code sections
11 206 and 206.5, and that a purported choice-of-law provision in the Option Waiver Agreement is
12 also invalid under Labor Code section 925(a)(2).

13 96. Plaintiff is also entitled to an order permanently enjoining Defendant, and any of
14 its successors and/or assigns, from seeking to enforce the aforementioned provisions.

15 97. Plaintiff also seeks and is entitled to an award of reasonable costs and attorney's
16 fees under C.C.P. section 1021.5, Labor Code section 218.5, Labor Code section 925(c), as well
17 as any other applicable law.

18 **PRAYER**

19 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and for the following
20 relief, as follows:

21 A. For special damages in an amount according to proof for Plaintiff's loss of past
22 and future earnings, lost stock options and value related thereto, lost incentive compensation, loss
23 of employment related opportunities in his field and damage to his professional reputation, all in
24 an amount to be proven at time of trial and as more specifically alleged above;

25 B. For all general and special damages to compensate Plaintiff for emotional distress,
26 and pain and suffering;

27 C. For punitive damages that will sufficiently punish, make an example of, and deter
28 future conduct by Defendants;

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- D. For all interest as allowed by law;
- E. For attorney’s fees and costs;
- F. For declaratory relief as indicated above; and,
- G. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully requests trial of this matter by jury.

DATED: February 13, 2020

HIGGS FLETCHER & MACK LLP

By: 

JASON C. ROSS, ESQ.
Attorney for Plaintiff
ANDRE CHARTRAND