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17 **SUPERIOR COURT OF CALIFORNIA**
18 **IN AND FOR THE COUNTY OF SACRAMENTO**

19 Michael Moreno,)
20 Plaintiff,) **Case No. 34-2009-00066085**
21 vs.) **FIRST AMENDED COMPLAINT FOR**
22 AARP, and Does 1-20, inclusive,) **RACE DISCRIMINATION, NATIONAL**
23 Defendants) **ORIGIN DISCRIMINATION,**
24) **RETALIATION, WRONGFUL**
25) **TERMINATION**
26) **DEMAND FOR JURY TRIAL**

27 Plaintiff Michael Moreno alleges as follows:

28 **JURISDICTIONAL FACTS**

29 1. At all times relevant hereto, Plaintiff Michael Moreno, ("Plaintiff" or "Moreno") is a
30 resident of the Town of Granite Bay, which is located in Placer County. During his
31 employment with AARP, also known as the American Association of Retired

1 Persons ("Defendant" or "AARP"), Plaintiff worked primarily in Sacramento,
2 California for AARP California ("AARP-CA"), although he also worked for
3 approximately four months in Mississippi, first as Interim State Director for AARP
4 Mississippi and then later as Associate Regional Director for the Southwest
5 Region.

6 2. Defendant AARP is a non-profit membership organization for people who are 50
7 years old or older. AARP has over 40 million members and operates offices in all
8 50 United States, the District of Columbia, Puerto Rico, and the U.S. Virgin
9 Islands.

10 3. The true names and capacities, whether individual, corporate, associate or
11 otherwise, and the true involvement of Defendants sued herein as DOES 1
12 through 20, inclusive, are unknown to Plaintiff who therefore sues said
13 Defendants by such fictitious names and will amend this Complaint to show the
14 true names, capacities and involvement when ascertained. Plaintiff is informed
15 and believes and thereon alleges that each of the Defendants designated as a
16 DOE is responsible in some manner for the events and happenings herein
17 referred to, and that Plaintiff's injuries and damages (as hereinafter set forth) were
18 proximately caused by said Defendants.

19 4. Plaintiff is informed and believes and thereon alleges that at all times herein
20 mentioned, each of the Defendants sued herein was the agent and/or employee of
21 each of the remaining Defendants, and each of them, was at all times acting within
22 the purpose and scope of such agency and employment.

23 5. Venue is proper in that the Plaintiff resides in this County and the Defendant's
24 California operations are based in this County. In addition, a substantial portion of
25 the events on which the complaint is based occurred in this County.

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GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

6. Moreno is a Latino and a Native American. He is fluent in Spanish, and clearly identifies as both a Latino and as a Native American.
7. AARP is organized into geographic regions, and further broken down into separate state divisions. AARP-CA is located in the Western region, which includes ten states. Each state has a State Director. AARP-CA is the largest state division, with approximately 25 employees.
8. At both the national and state level, leadership positions are filled by both AARP employees and volunteer members. While a volunteer National President presides over all the state offices, volunteers from each state decide on their division's specific priorities.
9. At the time that Moreno was hired, only two other Latinos held managerial or supervisory positions in AARP-CA. Upon information and belief, Moreno was the only Native American employed by AARP-CA.
10. On information and belief, AARP has engaged in a pattern or practice of failing and/or refusing to hire Latinos and Native Americans for managerial or supervisory positions.
11. Moreno has worked in legislative advocacy for many years. Immediately prior to joining AARP, Moreno worked as the Legislative Director for the United Farm Workers of America.
12. In February 2003, Moreno was recruited for a position with AARP-CA as a Legislative Representative (which is equivalent to being a lobbyist).
13. Lupe de la Cruz ("de La Cruz"), who was then AARP-CA's Manager for Advocacy, recruited Moreno. At the time that he recruited Moreno, de La Cruz was one of the highest ranking Latinos in AARP-CA.

1 14. During all relevant times, Tom Porter ("Porter") was the State Director of AARP-
2 CA.

3 15. In May 2003, Moreno was hired as the Associate State Director for Advocacy for
4 AARP-CA. In that position, he was an employee of AARP and reported directly to
5 de La Cruz. Moreno worked in AARP-CA's Sacramento office.

6 16. From the time of his hire until January 2005, Moreno reported to de La Cruz.

7 17. In April 2004, Moreno received the highest performance rating available, 125
8 points, and received a monetary bonus in recognition of his exceptional
9 performance.

10 18. In May 2004, de La Cruz told Moreno that de La Cruz had kissed a female
11 employee who worked for AARP-CA as an administrative assistant. Moreno told
12 de La Cruz that de La Cruz should cease engaging in this activity because he was
13 a manager and the female employee was a subordinate. During this conversation,
14 Moreno reminded de La Cruz that even if the female employee was a willing
15 participant, such a relationship could still be considered sexual harassment and
16 illegal.

17 19. On information and belief, beginning in or around May of 2004, de La Cruz and
18 this female employee had a romantic affair.

19 20. Sometime in 2004, information regarding the affair between de La Cruz and the
20 female employee became known to others, including their spouses.

21 21. After de La Cruz's spouse found out about his relationship with the female
22 employee, she contacted Porter, who was the State Director of AARP-CA and was
23 de La Cruz's boss, and demanded that the female employee be fired. At or
24 around this same time, Julie Bates, an Associate State Director in the California
25 AARP office, met with Porter and demanded that de La Cruz be fired for sexual
26

1 harassment. The female employee's husband also met with Porter and
2 demanded that he fire de La Cruz.

3 22. Porter then went to Moreno and directed Moreno to tell de La Cruz to stop the
4 relationship because Moreno "was Lupe's friend." However, Moreno refused to do
5 so, pointing out that de La Cruz had created a hostile work environment, that this
6 issue needed Porter's action, that de La Cruz was Moreno's boss, and that telling
7 de La Cruz to cease the relationship was Porter's job. In response, Porter told
8 Moreno, "I won't forget this, you'll pay for it."

9 23. In February 2005, de la Cruz resigned from his position. However, before he
10 resigned, de La Cruz completed Moreno's performance review for 2004 and again
11 rated him as 125, the highest possible rating for an employee at AARP-CA. De La
12 Cruz also told Moreno that he would be receiving the same bonus amount as the
13 previous year.

14 24. In the wake of de La Cruz' resignation, Porter became Moreno's direct supervisor.

15 25. After becoming Moreno's supervisor, Porter made a downward adjustment to the
16 performance rating that de La Cruz had given to Moreno for Moreno's work in
17 2004, reducing the rating from 125 to 100. At the same time, Porter also reduced
18 the bonus Moreno was supposed to receive. Porter's downward adjustment of
19 Moreno's performance rating and his bonus was in retaliation for Moreno's refusal
20 to go to de La Cruz and tell him to terminate the relationship with the female
21 employee.

22 26. In early 2005, following de La Cruz's resignation, the position of Advocacy
23 Manager of AARP-CA was open.

24 27. Moreno did not tell the Executive Board of AARP-CA that he was interested in the
25 position of Advocacy Manager. Nevertheless, two of the board members told
26 Moreno that they had asked Porter and Helen Russ ("Russ"), who was then in the

1 volunteer position of State President of AARP-CA, when Moreno would be
2 appointed to the vacancy. On information and belief, Russ and Porter responded
3 that Moreno was not being promoted to the position because he had no
4 managerial skills.

5 28. Eventually AARP hired Casey Young ("Young") as AARP-CA's Advocacy
6 Manager. Young is a Caucasian male who had previously worked with Porter
7 when they were both employed by the State of California.

8 29. In or around this same time period, Moreno learned that there was a vacant
9 Regional Director position in the Southwest region and decided to apply for it.

10 30. When Moreno informed Porter that he planned to apply for this position, Porter
11 responded by telling Moreno that he would not vouch for Moreno's managerial
12 skills and wondered aloud about who would support Moreno's candidacy. On
13 information and belief, Porter's refusal to support Moreno's application for the
14 position was in retaliation for his conduct relating to de la Cruz, and on account of
15 the fact that Moreno is a Latino and/or a Native American.

16 31. On information and belief, AARP has a pattern or practice of failing and/or refusing
17 to promote Latinos and/or Native Americans.

18 32. Moreno, who had previously worked as an assistant for Arizona United States
19 Senator John McCain, called Senator McCain for a reference. When Moreno
20 received the recommendation letter from Senator McCain, he placed it on Porter's
21 desk. Without comment, Porter forwarded it to AARP's National Director, Leland
22 White ("White").

23 33. On information and belief, after Moreno's reference letter was sent to White, he
24 directed his aide to call Moreno. During that call, White's aide told Moreno that he
25 would be interviewed for the Regional Director position for which he had applied.
26 Despite being assured that he would be interviewed for the position of Regional

1 Director for the Southwest, Moreno was never interviewed, and White appointed
2 Helen Wingard, a Caucasian woman who had previously been AARP Tennessee's
3 State Director, to the position.

4 34. In May 2005, a few weeks after the position of Regional Director for the Southwest
5 was filled, White called Moreno and offered to transfer him to a management
6 position in Tennessee, where he would serve as Interim State Director of
7 Tennessee. White told Moreno that this transfer would allow Moreno to get some
8 internal management experience since Moreno already had managerial
9 experience outside of AARP. Moreno agreed to the transfer.

10 35. Before Moreno actually moved to Tennessee, White called Moreno and offered
11 him a position of Interim State Director in Mississippi instead. White informed
12 Moreno that the Mississippi office was extremely dysfunctional and that he knew
13 that Moreno was the right person for the job. Moreno agreed to take the position
14 on a temporary basis with the understanding that he would be commuting between
15 Mississippi and California.

16 36. In May 2005, Moreno began to commute to Mississippi to serve as AARP
17 Mississippi's Interim State Director.

18 37. In late 2005, Moreno was promoted to Associate Regional Director for the
19 Southwest region, which is composed of 11 states. Moreno served in that
20 capacity until January 2006.

21 38. In January 2006, Moreno called White and requested a transfer to a management
22 position in California. Although White granted Moreno's request to return to
23 California, he was restored to his position as Legislative Representative, a non-
24 managerial position, where he would be supervised by Young.

25 39. On information and belief, when Porter learned that Moreno would be returning to
26 AARP-CA, Porter told Young to keep Moreno in line. Young responded, "Don't

1 worry, I'll take care of it." Subsequently, in referring to Moreno, Young told his
2 assistant, "Don't worry; I'm going to whip [Moreno] into shape." Young made these
3 comments despite never having worked with Moreno.

4 40. Throughout the time that Moreno reported to Young, Moreno was treated less
5 favorably than non-Latino and non-Native American employees who reported to
6 Young. For example, Young constantly micromanaged Moreno's work, including
7 keeping tabs on his whereabouts and insisting that Moreno justify all of his job-
8 related travel prior to going on the trips. On information and belief, Moreno was
9 the only employee reporting to Young who was subjected to this treatment.

10 41. Upon his return to California, Porter also treated Moreno in a demeaning,
11 discriminatory fashion. For example, when Moreno would speak in meetings,
12 Porter would look around the table, roll his eyes, make condescending comments,
13 and discount Moreno's contributions.

14 42. On information and belief, beginning in 2006, Porter and Young engaged in a
15 campaign to discredit Moreno with his co-workers and members of the California
16 Legislature. This campaign included, but was not limited to, assigning Moreno to
17 projects where he was denied the authority and/or the resources to complete the
18 project; requiring Moreno to submit letters he prepared for the Legislature to Porter
19 and Young for review and signature before the letters could go to legislators;
20 denying Moreno the opportunity to strengthen his presence and relationships with
21 legislators in Sacramento.

22 43. Furthermore, Porter and Young consistently allowed Moreno's similarly situated
23 colleague in Southern California -- Ernie Powell ("Powell"), a Caucasian male who
24 did not have Moreno's experience or credentials -- to lobby legislators in
25 Sacramento and give presentations to other AARP divisions. Porter and Young
26 ignored Moreno when he pointed out that Powell was not a registered lobbyist and

1 thus, per California law, could not perform lobbying functions for more than 25
2 hours a week. At the same time, Porter and Young prevented Moreno from
3 performing this lobbying work, despite the fact Moreno was a registered lobbyist
4 and therefore could perform lobbying work without any restrictions.

5 44. Powell's main responsibility was to engage member volunteers in Southern
6 California on federal legislative issues and Moreno was responsible for state
7 legislative issues and lobbying. Since the same volunteer members were engaged
8 to participate in both state and federal advocacy, Moreno and Powell worked on
9 these activities together as peers.

10 45. Despite the efforts by Porter and Young to undermine him, Moreno excelled in his
11 job functions. For example, in 2007 and 2008, Moreno built a presence at the
12 Sacramento Capitol of 200 active volunteers, making him the AARP-CA staff
13 member with the highest number of active volunteers working on legislative action.
14 Moreno called on these volunteers numerous times to assist him and his
15 colleagues at rallies, to support legislation, and to help coordinate events. His
16 ability to draw upon this reservoir of volunteers made him a highly effective at
17 working with legislators.

18 46. In July 2006, Ann Reed ("Reed") who was then the Communications Director for
19 AARP-CA, informed Moreno that a female employee had come to her complaining
20 that she had been sexually harassed by Rigo Saborio ("Saborio"), another AARP-
21 CA employee who was the then Manager of State Operations. According to Reed,
22 when this female employee went to Porter to file a sexual harassment complaint,
23 Porter called the female employee a liar and refused to accept the complaint or
24 report it to anyone in AARP's Human Resources Department.

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1 47. Moreno told Reed that AARP had a zero tolerance policy when it came to sexual
2 harassment, and that Porter could not refuse to report complaints of sexual
3 harassment of which he was aware.

4 48. Moreno told Reed to send an email to Porter, telling him that this female employee
5 had come to Reed and that if Porter didn't report the complaint to Human
6 Resources Department within 24 hours she would report it herself because Title
7 VII compelled her to do so.

8 49. After receiving Reed's email, Porter confronted Reed, saying that he did not
9 believe the female employee. In response, Reed told Porter that she spoke with
10 Moreno about the incident and that Moreno encouraged her to email Porter. At the
11 mention of Moreno's name, Porter became irate and berated Reed for talking to
12 Moreno about the situation.

13 50. On information and belief, in retaliation for Moreno assisting Reed and the female
14 employee in making a complaint regarding sexual harassment, Porter took a
15 series of adverse employment actions against Moreno. These actions included,
16 but were not limited to, the following: telling peers not to work with Moreno;
17 excluding Moreno from meetings with peers and volunteers and from conferences,
18 diversity meetings, and campaign strategy meetings; scrutinizing and limiting his
19 travel, reducing his bonuses; and giving him inaccurate and negative performance
20 reviews.

21 51. Due to Porter's adverse actions against Moreno, Kimberly Smith ("Smith"),
22 Manager of State Operations, demanded that those employees who reported to
23 her not work with Moreno, not invite Moreno to their regions, and not assist
24 Moreno. Smith directed her employees to work with Powell exclusively on the
25 state and federal advocacy projects that both Moreno and Powell worked on.
26

1 52. In September 2006, Moreno received a call from Rob Calhoun ("Calhoun"),
2 AARP's Human Resources representative. Calhoun informed Moreno that a
3 complaint had been filed against him, but refused to describe the content of
4 complaint and refused to disclose who filed it. During their conversation, Calhoun
5 asked Moreno, "Isn't it true that you've been spreading rumors about Saborio
6 having a sexual harassment complaint against him?" Moreno denied the
7 accusation, but then told Calhoun that Porter was retaliating against him for
8 assisting Reed and the female employee who alleged that she had been harassed,
9 and for forcing Porter to address the earlier situation with de La Cruz. Moreno
10 demanded that Calhoun conduct an investigation into Porter's conduct and asked
11 Calhoun to report back to him after looking into this allegation.

12 53. On information and belief, in further retaliation for Moreno insisting that Porter
13 directly discipline de La Cruz, and for Moreno assisting Reed in filing a complaint
14 regarding Saborio's sexual harassment of female employee, Porter either filed the
15 complaint with HR regarding Moreno, or encouraged someone else to file the
16 complaint.

17 54. In January 2007, Leland White left Moreno a voicemail message apologizing for
18 the fact that the investigation into Moreno's complaints regarding Porter had not
19 been concluded in a timely fashion. In this message, White informed Moreno that
20 he had directed Calhoun not to call him and said that the matter was over
21 because, "We've taken care of it." Moreno never spoke directly to White about his
22 allegations or the investigation that Calhoun supposedly conducted, nor did he
23 receive any indication of what action, if any, was taken in response to Moreno's
24 complaints.

25 55. In January 2007, AARP-CA launched a new campaign called "Divided We Fail."
26 Moreno was directed to lead a team in Northern California in implementing the

1 campaign. Moreno's involvement included organizing campaign "lift-offs,"
2 identifying and staffing each launch location, and formulating the campaign's
3 message.

4 56. In early July 2007, Young informed Moreno that a large rally in support of "Divided
5 We Fail" was to be held on August 7, 2007. Moreno reminded Young that the rally
6 would be in the middle of his vacation – a vacation which he had requested well in
7 advance, in keeping with AARP's policy on vacation requests. Young said that
8 Moreno's vacation would not be a problem and that Ernie Powell could act as the
9 point person until Moreno's return.

10 57. Moreno went on vacation, as planned.

11 58. When Moreno returned from vacation, he learned that several problems arose on
12 the day of the rally, especially in regards to disabled volunteers, and that Powell
13 did not deal with the problems effectively. Despite the fact that these problems
14 had arisen at the rally for which Powell was responsible, Young told Moreno that
15 he (Moreno) now worked for Powell.

16 59. During Moreno's mid-year performance review, which was conducted on August
17 20, 2007, Young excoriated him about the problems at the August 7 rally and his
18 work leading up to the rally, even though Moreno was not at the rally due to a
19 previously planned and approved vacation.

20 60. On information and belief, Powell was not reprimanded for his incompetence with
21 respect to his work prior to, and on the day of, the rally.

22 61. Moreno's 2007 mid-year review contained other false and misleading information;
23 including mischaracterizations of conversations Moreno had with a colleague and
24 with a representative from a California state senator's office. Moreno wrote a
25 rebuttal to the review, in which he complained about the differential treatment he
26 was receiving from Porter.

1 62. In January 2008, Moreno filed a complaint of discrimination with AARP's human
2 resources department, alleging that Porter and Young were discriminating against
3 him based on race and national origin.

4 63. AARP conducted an investigation, pursuant to which Moreno gave a statement to
5 Nancy Curielo, Human Resources Specialist, who promised to call Porter and
6 order him to talk to Young about his treatment of Moreno. Curielo never reported
7 back to Moreno regarding his claim.

8 64. During the second week of February 2008, Porter called Moreno and said, "I can't
9 believe you think that Casey and I are discriminating against you." During this
10 conversation, Moreno told Porter, "It is obvious that I have been discriminated
11 against and the first thing I want is for the misstatements and inaccuracies to be
12 taken out of my performance reviews." When Porter suggested that the two start
13 over, Moreno replied that the situation was laden with discrimination. Porter
14 promised Moreno that he would talk to Young.

15 65. In retaliation for Moreno filing a complaint of discrimination, Porter increased his
16 efforts to undermine Moreno including, but not limited to, the following: telling
17 Moreno's regional colleagues to avoid working with Moreno; forcing Moreno to
18 justify where he went, what he did, and with whom he talked; continuing to deny
19 Moreno the resources and support necessary to allow him to perform his job; and
20 directing Moreno to report to Ernie Powell, despite the fact that Moreno and Powell
21 held equivalent positions.

22 66. In July 2008, Porter announced that AARP-CA was being restructured. As part of
23 the restructuring, Moreno's job was being eliminated effective September 19,
24 2008.

25 67. On information and belief, Moreno's job and the job of Charles Mason (an African
26 American) were the only positions eliminated in connection with the restructuring.

1 Charles Mason, who is African American, was offered and took a position in
2 AARP's Washington, D.C. headquarters.

3 68. At the same time that Moreno's job was being eliminated, AARP created two "new"
4 positions: Associate State Director – Capital Action Team; and North Team
5 Lead/Supervisor (collectively, the "New Legislative Positions"). These two
6 positions were in addition to the existing vacancy for the Advocacy Manager.

7 69. Collectively, these three positions all included some of the job responsibilities that
8 were previously performed by Moreno. Moreover, the job description for the
9 position of Associate State Director – Capital Action Team was virtually identical to
10 the description of the job previously held by Moreno.

11 70. Moreno applied for each of the New Legislative Positions, as well as the Advocacy
12 Manager position, and was well-qualified to perform each.

13 71. Calhoun interviewed Moreno for the Associate State Director – Capital Action
14 Team position and the North Team Lead Supervisor position. At the beginning of
15 the interview for the former, Calhoun said, "I'm only going to ask you one question
16 on the Capital Action Team position because you already do that job."

17 72. Moreno was not hired for either of the New Legislative Positions or for the
18 Advocacy Manager position.

19 73. AARP-CA hired Powell, who is Caucasian, as Advocacy Manager, despite the fact
20 that Powell did not meet even the basic qualifications for the position: he had no
21 undergraduate degree, nor any internal or external management experience.

22 74. AARP-CA hired Michael Richards, another Caucasian male, as Associate State
23 Director – Capital Action Team. On information and belief, under Richards, the
24 number of volunteers has decreased dramatically from the number of engaged
25 volunteers during Moreno's tenure.

1 75. AARP-CA hired a Latina for the North Team Lead/Supervisor position, although on
2 information and belief, she has since been demoted to an Associate State Director
3 position in Los Angeles.

4 76. Moreno's position was eliminated and he was not hired for any of the New
5 Legislative Positions in retaliation for assisting in the filing of a complaint of sexual
6 harassment investigation, in retaliation for filing a complaint of racial and national
7 origin discrimination, and on account of his race and national origin.

8 77. On information and belief, AARP has a pattern or practice of terminating Latinos
9 and/or Native Americans.

10 78. Moreno filed a charge of discrimination naming AARP as a defendant with the
11 Equal Employment Opportunity Commission on October 23, 2008. The charge
12 was cross-filed with the California Department of Fair Employment and Housing.

13 79. On October 23, 2008, Moreno received a right to sue notice from the DFEH with
14 respect to AARP, which was tolled pending the outcome of the EEOC
15 investigation.

16 80. On or about September 14, 2009, Moreno received a Notice of Right to Sue from
17 the EEOC.

18
19 **FIRST CAUSE OF ACTION**

20 Race Discrimination
21 In Violation of Cal. Gov. Code §12940 *et seq.*

22 (Against All Defendants)

23 81. Plaintiff hereby incorporates by reference the foregoing paragraphs as though fully
24 set forth herein.

25 82. Under Cal. Gov. Code §12940(a), it is unlawful for an employer to discriminate
26 against an employee on the basis of race.

1 83. As set forth above, in subjecting Plaintiff to differential treatment in terms and
2 conditions of his employment, including scrutinizing his work and his travel plans,
3 limiting his ability to perform the functions of his job, and denying him promotional
4 opportunities, defendant discriminated against Plaintiff on the basis of race.

5 84. In eliminating plaintiff's position as Legislative Representative, and then refusing to
6 hire him for any of the New Legislative Positions or as Advocacy Manager,
7 Defendants discriminated against plaintiff on the basis of race.

8 85. On information and belief, Defendants' differential treatment of Moreno in the
9 terms and conditions of his employment is part of a pattern and practice on the
10 part of Defendants of discriminating against Latinos and/or Native Americans on
11 account of their race and/or national origin.

12 86. As a direct and proximate cause of Defendants' conduct, Plaintiff has suffered
13 damages, including economic losses and emotional distress, in an amount to be
14 determined at trial.

15 87. Defendants' actions were willful, malicious, fraudulent and oppressive, and were
16 committed with the wrongful intent to injure Plaintiff and in conscious disregard of
17 Plaintiff's rights.

18
19 WHEREFORE, Plaintiff requests judgment against Defendants as is more fully set
20 forth below.

21 **SECOND CAUSE OF ACTION**

22 National Origin Discrimination
23 In Violation of Cal. Gov. Code §12940 *et seq.*

24 (Against All Defendants)

25 88. Plaintiff hereby incorporates by reference the foregoing paragraphs as though fully
26 set forth herein.

1 89. Under Cal. Gov. Code §12940(a), it is unlawful for an employer to discriminate
2 against an employee on the basis of national origin.

3 90. As set forth above, in subjecting Plaintiff to differential treatment in terms of the
4 scrutiny, assignments, and promotional opportunities he received compared to
5 other similarly situated employees, Defendants discriminated against Plaintiff on
6 the basis of national origin.

7 91. In eliminating plaintiff's position as Legislative Representative, and then refusing to
8 hire him for any of the New Legislative Positions or for the position of Advocacy
9 Manager, Defendants discriminated against plaintiff on the basis of his national
10 origin.

11 92. On information and belief, Defendants' differential elimination of Moreno's position
12 and refusal to hire him for any available position is part of a pattern and practice on
13 the part of Defendants of discriminating against Latinos and/or Native Americans
14 on account of their race and/or national origin.

15 93. As a direct and proximate cause of Defendant's conduct, Plaintiff has suffered
16 damages, including economic losses and emotional distress, in an amount to be
17 determined at trial.

18 94. Defendants' actions were willful, malicious, fraudulent and oppressive, and were
19 committed with the wrongful intent to injure Plaintiff and in conscious disregard of
20 Plaintiff's rights.

21
22 WHEREFORE, Plaintiff requests judgment against Defendants as is more fully set
23 forth below.

24 **THIRD CAUSE OF ACTION**

25 Retaliation
26 In Violation of Cal. Govt. Code § 12940

(Against All Defendants)

1
2 95. Plaintiff hereby incorporates by reference the foregoing paragraphs as though fully
3 set forth herein.

4 96. Under Cal. Gov. Code §12940 *et seq.*, it is unlawful for an employer to terminate,
5 retaliate, or otherwise discriminate against a person in compensation of or in the
6 terms, conditions, or privileges of employment, on account of that person's
7 participation in protected activity.

8 97. As set forth above, Plaintiff engaged in protected activity by assisting employees in
9 filing complaints of sexual harassment and by filing his own complaint of
10 discrimination based on race and national origin.

11 98. As set forth above, as a result of Plaintiff's protected activity, he was subject to
12 retaliation by Defendants in the form of materially adverse employment actions up
13 to and including termination.

14 99. As a direct and proximate cause of Defendants' conduct, Plaintiff has suffered
15 damages, including economic losses and emotional distress, in an amount to be
16 determined at trial.

17 100. Defendant AARP's' actions were willful, malicious, fraudulent and oppressive,
18 and were committed with the wrongful intent to injure Plaintiff and in conscious
19 disregard of Plaintiff's rights.

20 WHEREFORE, Plaintiff requests judgment against Defendants as is more fully set
21 forth below.

22
23 **FOURTH CAUSE OF ACTION**

24 Wrongful Termination in Violation of Public Policy

25
26 (Against All Defendants)

1 101. Plaintiff hereby incorporates by reference the foregoing paragraphs, as though
2 fully set forth herein.

3 102. California Government Code section 12940(h) provides that it is an unlawful
4 employment practice "[f]or any employer, labor organization, employment agency,
5 or person to discharge, expel, or otherwise discriminate against any person
6 because the person has opposed any practices forbidden under this part or
7 because the person has filed a complaint, testified, or assisted in any proceeding
8 under this part."

9 103. As set forth above, Defendants terminated Plaintiff because he filed a complaint
10 alleging that he had been discriminated against on the basis of his race and
11 national origin and because he participated in assisting fellow employees to file
12 complaints of sexual harassment in the workplace.

13 104. In terminating Plaintiff because he filed a complaint alleging that he had been
14 discriminated against on the basis of his race and national origin and he
15 participated in assisting fellow employees file complaints of sexual harassment in
16 the workplace, Defendants terminated Plaintiff in violation of public policy.

17 105. As a proximate cause of Defendants' actions, Plaintiff has suffered damages,
18 including economic losses and emotional distress, in an amount to be determined
19 at trial.

20 106. Defendants' actions were willful, malicious, fraudulent and oppressive, and were
21 committed with the wrongful intent to injure Plaintiff and in conscious disregard of
22 Plaintiff's rights.

23
24 WHEREFORE, Plaintiff requests judgment against Defendants as is more fully set
25 forth below.


26 ///

REQUEST FOR RELIEF

1. For general damages according to proof;
2. For special damages according to proof;
3. For punitive damages with respect to each Cause of Action;
4. For costs of suit;
5. For interest at the maximum legal rate on all sums awarded;
6. For attorneys' fees with respect to the First through the Third Causes of Action;
- and
7. For such additional and further relief as the court deems just and proper.

Dated: February 12, 2010

DICKSON LEVY VINICK BURRELL HYAMS LLP



Sharon R. Vinick
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on each cause of action for which a trial by jury is proper.

Dated: February 12, 2010

DICKSON LEVY VINICK BURRELL HYAMS LLP



Sharon R. Vinick
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