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 10 HUMBOLDT COUNTY FAIR ASSOCIATION,
 11 JEFF FARLEY, CINDY OLSEN AND JOHN BURGER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

11	STUART P. TITUS, CAROLINE TITUS,)	Case No. CV-14-01043-SBA
12)	
13	Plaintiffs,)	Date Action Filed: March 5, 2014
14	vs.)	
15	HUMBOLDT COUNTY FAIR)	DEFENDANTS' ANSWER TO PLAINTIFFS'
16	ASSOCIATION, JEFF FARLEY, CINDY)	FIRST AMENDED COMPLAINT FOR
17	OLSEN, JOHN BURGER, Does 1 through)	WRONGFUL TERMINATION, CIVIL
18	10,)	RIGHTS VIOLATIONS
19	Defendants.)	

20 Defendants HUMBOLDT COUNTY FAIR ASSOCIATION, JEFF FARLEY, CINDY
 21 OLSEN and JOHN BURGER ("Defendants") answer the "First Amended Complaint for Wrongful
 22 Termination, Civil Rights Violations" of Plaintiffs STUART P. TITUS and CAROLINE TITUS
 23 ("Plaintiffs") as follows:

PARTIES

- 24 1. Defendants lack sufficient information and belief to form a belief as to the truth or
- 25 falsity of the allegations of this paragraph and, on that basis, deny said allegations.
- 26 2. Defendants admit the allegations of this paragraph.

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1 3. Defendants admit that Jeff Farley, Cindy Olsen and John Burger were or are members
2 of the Board of Directors of HCFA. Defendants deny the remaining allegations of this paragraph.

3 4. Defendants lack sufficient information and belief to form a belief as to the truth or
4 falsity of the allegations of this paragraph and, on that basis, deny said allegations.

5 **JURISDICTION AND VENUE**

6 5. Defendants admit that Humboldt County is within the jurisdiction of this court.
7 Defendants deny the remaining allegations of this paragraph.

8 6. Defendants admit that the court has federal question jurisdiction over claims asserting
9 the violation of 42 U.S.C. 1983 and deny the remaining allegations of this paragraph.

10 **FACTUAL ALLEGATIONS**

11 7. Defendants admit that Stuart Titus was employed in the capacity as General Manager
12 of the Fair from 1991 through February 28, 2013 when his last employment contract was not
13 renewed. Defendants lack sufficient information and belief to form a belief as to whether he was
14 CEO of HCFA from 1991 through February 2013 and, on that basis, deny said allegation.
15 Defendants deny the remaining allegations of this paragraph.

16 8. Defendants admit that Ferndale is town of about 1400, that it is the annual host to the
17 Humboldt County Fair, that the Titus' represent that they are married, and that Caroline Titus
18 represents that she is the co-owner, editor and publisher of the *Ferndale Enterprise*. Defendants lack
19 sufficient information and belief to form a belief as to the truth or falsity of the remaining allegations
20 of this paragraph and, on that basis, deny said allegations.

21 9. Defendants admit that Stuart Titus was employed in the capacity as General Manager
22 of the Fair from 1991 through February 28, 2013, that he has served on the Ferndale City Council
23 since 2005, and that the First Amended Complaint alleges what it alleges. Defendants deny the
24 remaining allegations of this paragraph.

25 10. Defendants admit that Defendant Farley was in 2008 an HCFA director and Mayor of
26 Ferndale, that he voted to deny a home occupation permit to Stuart Altschuler, and that the *Ferndale*
27 *Enterprise* depicted Defendant Farley in a cartoon on a couch. Defendants lack sufficient
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1 information and belief to form a belief as to the truth or falsity of the remaining allegations of this
2 paragraph and, on that basis, deny said allegations.

3 11. Defendants admit the allegations of this paragraph.

4 12. Defendants lack sufficient information and belief to form a belief as to the truth or
5 falsity of the allegations of this paragraph and, on that basis, deny said allegations.

6 13. Defendants admit that Defendant Farley and Plaintiff Stuart Titus met and talked at
7 the LAX International Airport in 2011. Defendants deny the remaining allegations of this paragraph.

8 14. Defendants admit that in 2011 and 2012 Stuart Titus stated that certain board actions
9 violated the Brown Act, the Board should retain counsel regarding that issue, and that he made a
10 complaint to Director Mogni. Defendants lack sufficient information and belief to form a belief as
11 to the truth or falsity of the remaining allegations of this paragraph and, on that basis, deny said
12 allegations.

13 15. Defendants admit that in or about April 2012, Defendant Burger contacted Stuart
14 Titus and advised him that some Board members had concerns about the media coverage of the
15 Board. Defendants deny the remaining allegations of this paragraph.

16 16. Defendants admit that the HCFA's Executive Committee met on or about April 30,
17 2012, that Defendant Burger was present, that there was discussion by Defendant Olsen and others
18 of Mr. Titus' recording of Board meetings, the way in which he conveyed his opinions about the
19 Board's compliance with the Brown Act, and issues relating to inaccuracies and negative reporting
20 about the Board and Board members appearing in stories in the *Ferndale Enterprise*. Defendants
21 also admit that Stuart Titus made the statements, among others, attributed to him in paragraph 16.
22 Defendants lack sufficient information and belief to form a belief as to the truth or falsity of the
23 remaining allegations of this paragraph and, on that basis, deny said allegations.

24 17. Defendants admit that Defendant Burger made the requests and deny the remaining
25 allegations of this paragraph.

26 18. Defendants admit that at a Board meeting in May, 2012, Defendant Burger discussed
27 the subject of the minutes of an April 30 Executive Committee meeting, instructed Stuart Titus not
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1 to include them in the Board packet, and that Stuart Titus responded that they had already been sent
2 out. Defendants further admit that neither the Board nor the Executive Committee ever approved
3 the April 30 minutes and that the Executive Committee has not met since April 30, 2012.

4 Defendants deny that there was a change in protocol or that there was a protocol for Executive
5 Committee meeting minutes. Defendants lack sufficient information and belief to form a belief as to
6 the truth or falsity of the remaining allegations of this paragraph and, on that basis, deny said
7 allegations.

8 19. Defendants admit that the *Ferndale Enterprise* ran two such stories. Defendants lack
9 sufficient information and belief to form a belief as to the truth or falsity of the remaining allegations
10 of this paragraph and, on that basis, deny said allegations.

11 20. Defendants admit that the *Ferndale Enterprise* ran such a story. Defendants deny that
12 Director Martin filed a complaint. Defendants lack sufficient information and belief to form a belief
13 as to the truth or falsity of the remaining allegations of this paragraph and, on that basis, deny said
14 allegations.

15 21. Defendants are uncertain as to the date but admit that the *Ferndale Enterprise* ran
16 such a story.

17 22. Defendants admit that based on a limited response from Board members, Stuart Titus
18 received a favorable review.

19 23. Defendants admit the allegations of this paragraph.

20 24. Defendants admit that in January 2013, the Board considered a proposal to rehire
21 Plaintiff Titus to a three-year contract which, among other things, included a pay cut, that the Board
22 voted 11-8 to reject the proposed offer to rehire Plaintiff Stuart Titus, that several speakers at the
23 meeting voiced support for retaining him, and that Directors Farley, Martin, Bugenig, Renner, and
24 Olsen, among others, voted against the proposal. Defendants lack sufficient information and belief
25 to form a belief as to the truth or falsity of the remaining allegations of this paragraph and, on that
26 basis, deny said allegations

1 25. Defendants admit the Board has formed two *ad hoc* committees and that it is its
2 position that the committees are not covered by the Brown Act. Defendants also admit that Board
3 members have had interactions with Plaintiff Caroline Titus about her interrupting meetings to take
4 photographs. Defendants deny the remaining allegations of this paragraph.

5 26. Defendants deny the allegations of this paragraph.

6 27. Defendants admit that the HCFA is a private corporation and that the referenced case
7 is cited correctly. Defendants deny the remaining allegations of this paragraph.

8 **FIRST CAUSE OF ACTION**

9 28. Defendants incorporate by reference and re-allege their responses to Paragraphs 1-27
10 above.

11 29. Defendants deny the allegations of this paragraph.

12 30. Defendants deny the allegations of this paragraph.

13 31. Defendants deny the allegations of this paragraph.

14 32. Defendants deny the allegations of this paragraph.

15 33. Defendants deny the allegations of this paragraph.

16 34. Defendants deny the allegations of this paragraph.

17 35. Defendants deny the allegations of this paragraph.

18 **SECOND CAUSE OF ACTION**

19 36. Defendants incorporate by reference and re-allege their responses to Paragraphs 1-35
20 above.

21 37. Defendants deny the allegations of this paragraph.

22 38. Defendants deny the allegations of this paragraph.

23 39. Defendants deny the allegations of this paragraph.

24 40. Defendants deny the allegations of this paragraph.

25 41. Defendants deny the allegations of this paragraph.

26 42. Defendants deny the allegations of this paragraph.

27 43. Defendants deny the allegations of this paragraph.

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THIRD CAUSE OF ACTION

44. Defendants incorporate by reference and re-allege their responses to Paragraphs 1-26 above.

45. Defendants deny the allegations of this paragraph.

46. Defendants deny the allegations of this paragraph.

47. Defendants deny the allegations of this paragraph.

48. Defendants deny the allegations of this paragraph.

49. Defendants deny the allegations of this paragraph.

50. Defendants deny the allegations of this paragraph.

FOURTH CAUSE OF ACTION

51. Defendants incorporate by reference and re-allege their responses to Paragraphs 1-26 above.

52. Defendants deny the allegations of this paragraph.

53. Defendants deny the allegations of this paragraph.

54. Defendants deny the allegations of this paragraph.

55. Defendants deny the allegations of this paragraph.

PRAYER FOR RELIEF

Defendants deny that Plaintiffs are entitled to any of the relief prayed for, or any relief at all, in this action. Defendants request:

1. That Plaintiffs take nothing by reason of their complaint, and that judgment be rendered in favor of Defendants;

2. That Defendants be awarded its costs of suit and reasonable attorney's fees incurred in defense of this action; and

3. For such other and further relief as the Court deems just and proper.

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AFFIRMATIVE DEFENSES

WITHOUT WAIVING ANY OF THE FOREGOING, DEFENDANTS ASSERT AS THEIR AFFIRMATIVE DEFENSES TO PLAINTIFFS' FIRST AMENDED COMPLAINT THE FOLLOWING:

FIRST AFFIRMATIVE DEFENSE

As and for a first affirmative defense, Defendants allege that Plaintiffs' complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

As and for a second affirmative defense, Defendants allege that Plaintiffs' claims are barred by any and all applicable statutes of limitation.

THIRD AFFIRMATIVE DEFENSE

As and for a third affirmative defense, Defendants allege that Defendants are not liable for the alleged actions due to qualified or good faith immunity as Defendants took all or certain of the alleged actions in their official capacity with a good faith belief in the legality of their actions.

FOURTH AFFIRMATIVE DEFENSE

As and for a fourth affirmative defense, Defendants allege that they were not acting under the color of law as required by 42 U.S.C. § 1983 as the HCFA is neither a governmental entity nor an entity whose actions constitute state action.

FIFTH AFFIRMATIVE DEFENSE

As and for a fifth affirmative defense, Defendants allege that Plaintiffs' injury, if any, did not amount to a violation of a federally protected right as Plaintiffs were not chilled in the assertion of any First Amendment rights.

SIXTH AFFIRMATIVE DEFENSE

As and for a sixth affirmative defense, Defendants allege that Plaintiffs' injury, if any, was the result of Stuart Titus' conduct in the way he exercised his employment duties.

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SEVENTH AFFIRMATIVE DEFENSE

As and for a seventh affirmative defense, Defendants allege that Defendants' conduct was not unlawful and/or that Defendants did not participate in any unlawful acts.

EIGHTH AFFIRMATIVE DEFENSE

As and for an eighth affirmative defense, Defendants allege that Defendants' actions were at all times privileged and/or justified and/or excused as Defendants took all or certain of the alleged actions in their official capacity with a good faith belief in the legality of their actions.

NINTH AFFIRMATIVE DEFENSE

As and for a ninth affirmative defense, Defendants allege that Plaintiffs' claims are barred in whole or in part pursuant to privileges and immunities provided by state and federal law as Defendants took all or certain of the alleged actions in their official capacity with a good faith belief in the legality of their actions.

TENTH AFFIRMATIVE DEFENSE

As and for a tenth affirmative defense, Defendants allege that Plaintiffs have failed to state a claim for attorneys' fees as a matter of law.

ELEVENTH AFFIRMATIVE DEFENSE

As and for an eleventh affirmative defense, Defendants allege that Plaintiffs have failed to state a claim for punitive damages as a matter of law.

TWELFTH AFFIRMATIVE DEFENSE

As and for a twelfth affirmative defense, Defendants allege that Plaintiffs have failed to state a claim for statutory penalties as a matter of law.

THIRTEENTH AFFIRMATIVE DEFENSE

As and for a thirteenth affirmative defense, Defendants allege that Plaintiffs' claims are barred in whole or in part by the doctrines of waiver, estoppel and acquiescence in that Plaintiff Stuart Titus was responsible for the non-renewal of his employment contract due to the way he exercised his employment duties and conducted himself vis-à-vis Board members.

1 unstated, available defenses. Defendants reserve herein the right to assert additional affirmative
2 defenses in the event that discovery indicates that they would be appropriate.

3 WHEREFORE, Defendants pray that Plaintiffs take nothing from their complaint, that
4 Defendants have recovery of their fees and costs of suit herein incurred, and for such other and
5 further relief as may be just and proper.

6
7 DATED: May 8, 2014

FOSTER EMPLOYMENT LAW



8
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