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Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

STUART P. TITUS, CAROLINE TITUS,
Plaintiffs,

vs.

HUMBOLDT COUNTY FAIR
ASSOCIATION, JEFF FARLEY, CINDY
OLSEN, JOHN BURGER, DOES 1
through 10.

Defendants.

CASE NO. C 14-01043 SBA

FIRST AMENDED COMPLAINT
COMPLAINT FOR WRONGFUL
TERMINATION, CIVIL RIGHTS
VIOLATIONS.

JURY TRIAL DEMANDED.

COME NOW Plaintiffs Stuart P. Titus and Caroline Titus, to allege:

PARTIES

1. Plaintiffs Stuart P. Titus and Caroline Titus are, and at all times mentioned herein were, individuals residing in the County of Humboldt, State of California.

2. Defendant Humboldt County Fair Association (hereafter "HCFA") is a corporation organized and existing under the laws of the State of California. HCFA maintains its

1 principal place of business in Ferndale, CA, within the County of Humboldt.

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3 3. Defendants Jeff Farley, Cindy Olsen and John Burger are individuals who were, at
4 times relevant herein, members of the Board of Directors of HCFA.

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6 4. Plaintiffs are informed and believe, and thereon allege, that at all relevant times herein
7 defendants were the agents, employees and/or servants, masters or employers of each
8 other, and in doing the things herein alleged, were acting within the course and scope of
9 such agency or employment, and with the approval and ratification of each of the other
10 defendants. Plaintiffs are further informed and believe, and thereon allege, that each and
11 every one of the acts and omissions alleged herein were performed by, and/or
12 attributable to, all defendants, each acting as agents and/or employees, and/or under the
13 direction and control of each of the other defendants, and that said acts and failures to
14 act were within the course and scope of said agency, employment and/or direction and
15 control. Plaintiffs are further informed and believe, and thereon allege, that each of the
16 defendants herein gave consent to, ratified, and authorized the acts alleged herein to
17 each of the remaining defendants. The wrongful acts and omissions alleged to have
18 occurred herein were performed by management level employees of defendants, and/or
19 were performed by employees of the defendant(s) in the course and scope of their
20 employment.

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23 **JURISDICTION AND VENUE**

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25 5. The unlawful practices complained of herein occurred in Humboldt County, California,
26 which is within the jurisdiction of this court.

1 6. The court has federal question jurisdiction over this action based upon the assertion of
2 violations of 42 U.S.C. 1983.

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4 **FACTUAL ALLEGATIONS**

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6 7. Plaintiff Stuart P. Titus was employed as the General Manager and CEO of HCFA from
7 January, 1991, through February 28, 2013. Plaintiff's last employment contract, which
8 expired on February 28, 2013, was not renewed by HCFA in retaliation for the actions of
9 plaintiffs as described herein.

10
11 8. The plaintiffs, Stuart Titus and Caroline Titus, are married to each other. Caroline
12 Titus, is the owner, editor and publisher of the *Ferndale Enterprise*, a 136-year-old
13 newspaper she acquired in 1998. Ferndale, CA, is a town of about 1,400 people, and is
14 the host city to the Humboldt County Fair that takes place every year in the month of
15 August. The *Ferndale Enterprise* newspaper is the community property of both plaintiffs,
16 but Stuart Titus is a silent partner/owner. Caroline Titus has sole editorial control, and
17 makes all the decisions relating to the newspaper. Stuart Titus' earnings while employed
18 at HCFA were the community property of both plaintiffs.

19
20 9. Stuart Titus was continuously employed as General Manager of HCFA for 22 years,
21 and was widely considered to have been an excellent fair manager. From 2005 through
22 the present, Stuart Titus has been an elected member of the Ferndale City Council.
23 Plaintiffs allege that Stuart Titus' employment contract with HCFA was not renewed in
24 retaliation for plaintiffs' exercise of certain constitutional and statutory rights, including
25 their rights to free speech and free press, and particularly in connection with critical
26 newspaper coverage of certain members of the HCFA Board of Directors in the *Ferndale*
27 *Enterprise*.

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3 10. In January, 2008, defendant Jeff Farley (who is an HCFA Director), who was also
4 Mayor of Ferndale, voted, as Mayor of Ferndale, to deny a home occupation permit to a
5 gay psychotherapist, Stuart Altschuler, who sought a permit to see patients at his
6 Ferndale home. Mayor Farley was the lone vote on the city council to deny the permit at
7 that time, and was the subject of community ridicule, including an editorial cartoon in the
8 *Ferndale Enterprise* depicting Farley on a therapist's couch receiving counseling from Mr.
9 Altschuler for his "abandonment issues."

10
11 11. In July, 2009, defendant Jeff Farley, who was then the Mayor of Ferndale, was
12 arrested for driving under the influence of alcohol and child endangerment when he drove
13 his milk truck while drunk with his 13-year-old grand-daughter in the vehicle. The
14 *Ferndale Enterprise* covered his arrest, prosecution and subsequent plea bargain to a
15 "wet reckless" charge.

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18 12. In September, 2011, Director Martin's cousin, Mike Martin, was featured in a front-
19 page story and lampooned in an editorial cartoon in the *Ferndale Enterprise* for denying in
20 a radio interview that a racist incident had occurred during a Ferndale High School football
21 game when he had no basis for the denial. (The alleged racist incident was that a
22 Ferndale fan had called a member of the opposing team a "nigger.")

23
24 13. In 2011, at LAX International Airport, defendant Farley told Stuart Titus that he was
25 going to "get" Stuart Titus as "payback" for the *Ferndale Enterprise's* reporting of his 2009
26 drunk driving arrest and prosecution.
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1 14. In 2012, Stuart Titus complained to Director Mogni that Mogni had violated Stuart
2 Titus' privacy rights and the Brown Act by disclosing personnel information concerning
3 Stuart Titus from a closed board meeting. In 2011 and 2012, Stuart Titus expressed
4 concerns more generally to board members that certain board actions violated the Brown
5 Act, and suggested that they retain counsel to advise them concerning Brown Act
6 compliance.

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9 15. On April 23, 2012, Stuart Titus received a call from Board President John Burger.
10 Burger advised Stuart Titus of the board members' "concerns" as to the effect of media
11 coverage could have on Stuart Titus' future employment with HCFA. Burger told Stuart
12 Titus that he had received several calls from board members about media coverage
13 following the previous week's finance committee meeting.

14
15 16. On April 30, 2012, HCFA's Executive Committee met. Defendant Burger was a
16 member of the Executive Committee and was present. Defendant Cindy Olsen presented
17 three items for discussion: (1) That certain board members felt "threatened" by Stuart
18 Titus when he electronically recorded HCFA board meetings; (2) That certain board
19 members felt "threatened" when Stuart Titus reminded them of their obligations under the
20 Brown Act; and (3) That Stuart Titus, as co-owner of the *Ferndale Enterprise*, should
21 make sure that board members not be "made to look bad" in any stories that appeared in
22 the newspaper. Cindy Olsen cited two stories as examples. First was a story on the
23 board's decision to extend Stuart Titus' contract by one year, and second, was the series
24 of stories regarding Jeff Farley. Cindy Olsen told Stuart Titus that his future employment
25 with HCFA could be affected if he failed to adequately address these concerns.
26 Defendant Burger, as Board President, acquiesced to Director Olson's comments to Stuart
27 Titus. Defendant Burger knew or should have known that Director Olson's comments
28 were an infringement of Stuart Titus' free speech rights, and took no action to correct or

1 educate Director Olson. Stuart Titus responded to these concerns by pointing out that he
2 recorded the meetings to get an accurate record to compose minutes. As to the second
3 issue, Stuart Titus told the Committee that his reminders about the Brown Act were not a
4 threat, but an entreaty to get them to comply with the law, and that it was his responsibility
5 to tell them if he thought they violated the Brown Act. As to the third issue, Stuart Titus
6 told the Committee that he is a silent partner in the *Ferndale Enterprise*, and that his wife
7 has sole editorial control.

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10 17. On two occasions in May, 2012, President Burger requested that Stuart Titus not
11 make public the minutes of the April 30, 2012, meeting of the HCFA's Executive
12 Committee. This was contrary to previous custom of the Board.

13
14 18. At HCFA's May 21, 2012, board meeting, Director Renner stated that the *Ferndale*
15 *Enterprise* should not have reported on the vote to extend Stuart Titus' employment
16 contract because it was personnel matter. (In fact, the vote was public information.) At
17 that same board meeting, President Burger discussed the minutes of the April 30, 2012,
18 Executive Committee meeting. Burger said he had instructed Stuart Titus not to include
19 those minutes in the Board packet. Stuart Titus responded that the board packet had
20 already been sent out when Burger made his request. The board declined to approve the
21 April 30, 2012, minutes at the May 21, 2012, meeting, citing a change in protocol. In
22 particular, President Burger decided to require that the minutes be approved by the
23 Executive Committee before they would be approved by the full board. The Executive
24 Committee has not met again since its meeting of April 30, 2012. Thus, the minutes of
25 April 30, 2012, have never been approved. Stuart Titus believes the Board made this
26 change of protocol to avoid facing the issue of whether to approve or disapprove the April
27 30, 2012 minutes.
28

1 19. Meanwhile, the *Ferndale Enterprise* ran two front-page stories about the April 30,
2 2012, Executive Committee meeting. On May 17, 2012, the *Enterprise* ran a story
3 headlined “Directors Threaten Humboldt County Fair Manager’s Job—Long-time manager
4 told to stop reminding fair board about the Brown Act; newspaper must not publish stories
5 that makes any directors ‘look bad.’” On May 24, 2012, the *Enterprise* ran a story entitled
6 “Humboldt County Fair Manager Pressured to Keep Controversial Committee Minutes
7 Away from Board.”

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10 20. On June 2, 2012, Director Martin filed a complaint with the Ferndale Planning
11 Commission against Ferndale resident Richard Hooley on the issue of a ten-year-old
12 fence on a dead-end street. Hooley claimed that Director Martin filed the complaint in
13 retaliation for Hooley’s having criticized HCFA for trying to “muzzle” the *Ferndale*
14 *Enterprise* when it told Stuart Titus to make sure that no stories that made the board “look
15 bad” appeared in the newspaper. On August 2, 2012, the *Enterprise* ran a front-page
16 headline on the issue entitled “Fence Fiasco Involves Allegations of Payback.”

17
18 21. On June 7, 2012, the *Enterprise* ran a front-page story about Director Farley’s being
19 passed over by the Governor for an appointment to the state transportation commission in
20 addition to a critical editorial cartoon about Farley seeking higher offices.

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23 22. At the end of November, 2012, HCFA gave Stuart Titus a favorable performance
24 review.

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27 23. On January 7, 2013, the HCFA board voted 13-7 not to renew Stuart Titus’
28 employment contract.

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3 24. After a public outcry over the decision not to renew Stuart Titus' employment contract,
4 the HCFA Board held a second meeting in January, 2013, to consider Stuart Titus' offer to
5 take a \$30,000-per-year pay cut in exchange for a new three-year contract. At that
6 meeting, the Board voted 11-8 to reject Stuart Titus' offer. A majority of the public
7 speakers at the Board Meeting voiced support for retaining Stuart Titus as general
8 manager of HCFA. Voting against retaining Stuart Titus as general manager were
9 Directors Farley, Martin, Bugenig, Renner, and Olsen, among others.

10
11 25. After HCFA's termination of Stuart Titus' employment, HCFA continued to shun press
12 coverage, even going as far as instructing the Ferndale Enterprise/Caroline Titus not to
13 take pictures during a public board meeting. The Board also formed two *ad-hoc*
14 committees. In the year since Titus' termination, very few of the fair's seven standing
15 committees have met. Most HCFA business that was formerly conducted by standing
16 committees was conducted by one of the *ad-hoc* committees. HCFA takes the position
17 that the ad hoc committees are not subject to the Brown Act, and by doing so, conducted
18 much business in private that was formerly subject to public scrutiny. When plaintiffs
19 make requests for records pursuant to the Public Records Act, the Board fails to
20 adequately respond. Plaintiffs have been champions of open government and robust
21 scrutiny of their public officials; defendants, in contrast, have attempted to shield their
22 conduct from public view, and continue to do so to this day.

23
24 26. HCFA terminated Stuart Titus after 22 years of employment in retaliation for Stuart
25 Titus' communications to the Board about HCFA's violations of the Brown Act, and in
26 retaliation for Stuart Titus' refusal to censor the *Ferndale Enterprise* newspaper. HCFA
27 further attempted to influence or coerce plaintiffs to censor the *Ferndale Enterprise's* news
28 coverage of HCFA and its Directors by means of its threat to Stuart Titus of discharge or

1 loss of employment.
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4 27. Although HCFA is a private corporation, it is, for the purposes of civil rights litigation
5 under 42 U.S.C. 1983, either (1) a governmental entity, or (2) an entity whose actions
6 constitute "state action" for constitutional purposes. *Clark v. County of Placer* (1996, E.D.
7 Cal.) 923 F.Supp. 1278.
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9

10 **FIRST CAUSE OF ACTION**

11 **[BY PLAINTIFF STUART TITUS AGAINST DEFENDANTS FARLEY, OLSEN AND**
12 **BURGER IN THEIR INDIVIDUAL CAPACITIES, AND AGAINST DEFENDANT HCFA**
13 **UNDER *MONELL*]**

14 **[VIOLATION OF EMPLOYEE FREE SPEECH/PRESS RIGHTS, 42 U.S.C. 1983]**
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16 28. Plaintiff incorporates by reference and re-alleges Paragraphs 1 through 27 of this
17 Complaint as if fully set forth herein.
18

19 29. Stuart Titus' speech as co-owner of the *Ferndale Enterprise* was not a part of his
20 official duties as General Manager of HCFA, and such speech is entitled to the highest
21 protection as political speech under the First Amendment to the U.S. Constitution. Stuart
22 Titus' speech relating to the Brown Act was either (1) outside his official duties as General
23 Manager, or (2) is protected speech made at work due to the strong public interest in
24 open government.
25

26 30. Defendants were acting or purporting to act under color of state law and in the
27 performance of their official duties. Defendants' actions herein were done intentionally or
28

1 in reckless disregard of plaintiff's civil rights.
2

3 31. Defendants took adverse employment action against Stuart Titus by threatening to
4 terminate his employment, and then, finally, terminating his employment as General
5 Manager of HCFA. Stuart Titus' protected speech was a substantial or motivating factor
6 for the adverse employment actions of defendants.
7

8 32. Defendant HCFA is liable to plaintiff Stuart Titus based upon the actions of defendants
9 Farley, Olsen and Burger, and other members of the HCFA Board of Directors, because
10 the members of the Board of Directors are final policymakers for HCFA. HCFA is also
11 liable to plaintiff due to its failure to adequately train its Board of Directors on the
12 applicable standards of conduct to be expected of reasonably competent members of a
13 board of directors. The failure to adequately train was an obvious and proximate cause of
14 plaintiff's injuries. Defendant Burger, as HCFA President, had the duty to adequately
15 train, educate and correct his fellow board members. Defendant Burger failed to properly
16 discharge this duty.
17

18 33. As a proximate result of his wrongful termination of employment by defendants,
19 plaintiff Stuart Titus suffered aggravation, emotional distress, loss of earnings, and loss of
20 intangible employment opportunities.
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22 34. Plaintiff is entitled to an award of reasonable attorney's fees under 42 U.S.C. 1988.
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24 35. Defendants' unlawful conduct was reckless, malicious, oppressive, or in conscious
25 disregard of plaintiff's rights. Plaintiff is entitled to an award of punitive damages in an
26 amount to be proven at trial.
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SECOND CAUSE OF ACTION

**[BY PLAINTIFF CAROLINE TITUS AGAINST DEFENDANTS FARLEY, OLSEN AND
BURGER IN THEIR INDIVIDUAL CAPACITIES, AND AGAINST DEFENDANT HCFA
UNDER MONELL]**

[VIOLATION OF CITIZEN FREE SPEECH/PRESS RIGHTS, 42 U.S.C. 1983]

36. Plaintiff incorporates by reference and re-alleges Paragraphs 1 through 35 of this Complaint as if fully set forth herein.

37. Caroline Titus' speech as Co-Owner, Publisher and Editor of the *Ferndale Enterprise* is entitled to the highest protection as political speech under the First Amendment to the U.S. Constitution.

38. Defendants were acting or purporting to act under color of state law and in the performance of their official duties. Defendants' actions herein were done intentionally or in reckless disregard of plaintiff's civil rights.

39. Defendants took adverse action against Caroline Titus by threatening to terminate Stuart Titus' employment, and then, finally, terminating his employment as General Manager of HCFA. Defendants took these actions in retaliation for Caroline Titus' protected speech, and in an attempt to deter Caroline Titus from freely exercising her free speech and press rights. Defendants knew that their actions would be likely to chill the speech of a reasonable person in Caroline Titus' position. Defendants knew that their actions were likely to have a significant adverse financial and emotional impact upon Caroline Titus. Defendants knew or should have known that their termination of Stuart Titus' employment, in which Caroline Titus had a community property interest, would

1 cause Caroline Titus to suffer a pecuniary loss.

2
3 40. Defendant HCFA is liable to plaintiff Caroline Titus based upon the actions of
4 defendants Farley, Olsen and Burger, and other members of the HCFA Board of
5 Directors, because the members of the Board of Directors are final policymakers for
6 HCFA. HCFA is also liable to plaintiff due to its failure to adequately train its Board of
7 Directors on the applicable standards of conduct to be expected of reasonably competent
8 members of a board of directors. The failure to adequately train was an obvious and
9 proximate cause of plaintiff's injuries.

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12 41. As a proximate result of defendants' wrongful conduct, plaintiff Caroline Titus suffered
13 aggravation, emotional distress, and loss of earnings (her community property interest in
14 Stuart Titus' earnings).

15
16 42. Plaintiff is entitled to an award of reasonable attorney's fees under 42 U.S.C. 1988.

17
18 43. Defendants' unlawful conduct was reckless, malicious, oppressive, or in conscious
19 disregard of plaintiff's rights. Plaintiff is entitled to an award of punitive damages in an
20 amount to be proven at trial.

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23 **THIRD CAUSE OF ACTION**

24 **[BY PLAINTIFFS AGAINST ALL DEFENDANTS]**

25 **[VIOLATION OF TOM BANE CIVIL RIGHTS ACT, CAL. CIVIL CODE SECTION 52.1]**

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27 44. Plaintiffs incorporate by reference and re-alleges Paragraphs 1 through 26 of this
28

1 Complaint as if fully set forth herein.
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4 45. Defendants interfered with, or attempted to interfere with, plaintiffs' rights to freedom
5 of speech and freedom of press under the First Amendment to the U.S. Constitution, and
6 under Article I, Section 2, of the California Constitution. Defendants' interference or
7 attempted interference with plaintiff Stuart Titus' free speech rights also violated Cal.
8 Labor Code section 1102. Defendants' retaliated against plaintiff Stuart Titus for refusing
9 to participate in their attempt to violate, or violation of, the Ralph M. Brown Act, Cal.
10 Government Code section 54950 et seq., in violation of Labor Code section 1102.5(c).
11

12 46. Defendants' conduct was intentional, and was accomplished by means of threats,
13 intimidation or coercion. Plaintiffs reasonably believed that defendants' threat to
14 discharge Stuart Titus from employment would be carried out, and ultimately, defendants
15 did terminate Stuart Titus' employment in retaliation for plaintiffs' exercise of their statutory
16 and constitutional rights as set forth above.
17

18 47. As a proximate result defendants' wrongful conduct, plaintiffs suffered aggravation,
19 emotional distress, loss of earnings, and, for plaintiff Stuart Titus, loss of intangible
20 employment opportunities.
21

22 48. Plaintiffs are entitled to an award of reasonable attorney's fees under Civil Code
23 section 52.
24

25 49. Plaintiffs should be awarded a civil penalty of \$25,000 each under Civil Code section
26 52.
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2 50. Defendants' unlawful conduct was reckless, malicious, oppressive, or in conscious
3 disregard of plaintiffs' rights. Plaintiffs are entitled to an award of punitive damages in an
4 amount to be proven at trial.
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8 **FOURTH CAUSE OF ACTION**
9 **[BY PLAINTIFF STUART TITUS AGAINST DEFENDANT HCFA]**
10 **[CALIFORNIA STATE LAW-- WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC**
11 **POLICY]**
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13 60. Plaintiff incorporates by reference and re-alleges Paragraphs 1 through 26 of this
14 Complaint as if fully set forth herein.
15

16 61. Plaintiff's discharge from employment violated the public policies set forth in the free
17 speech and free press provisions of the U.S. and California Constitutions, the Ralph M.
18 Brown Act, and in Labor Code sections 1102 and 1102.5.
19

20 62. Defendant's violation of public policy was a substantial and motivating reason for
21 plaintiff's discharge from employment.
22

23 63. As a proximate result of defendant's wrongful conduct, plaintiff Stuart Titus suffered
24 aggravation, emotional distress, loss of earnings, and loss of intangible employment
25 opportunities.
26

27 64. Defendant's unlawful conduct was reckless, malicious, oppressive, or in conscious
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1 disregard of plaintiff's rights. Plaintiff is entitled to an award of punitive damages in an
2 amount to be proven at trial.

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5 **PRAYER**

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7 WHEREFORE, Plaintiff prays the Court grant relief as follows:

- 8
9 1. For general damages according to proof at trial;
10 2. For special damages according to proof at trial;
11 3. For civil penalties as authorized by law;
12 4. For punitive damages against the defendants as prayed for in this Complaint;
13 5. For attorney's fees;
14 6. For costs of suit;
15 7. For such further relief as the court deems just and proper.
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18 **DEMAND FOR JURY TRIAL**

19 Plaintiff demands a jury trial of those causes of action triable by jury.
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22
23 Dated: April 23, 2014

Respectfully Submitted,

24
25 /s/ Peter E. Martin

26 _____
27 Peter E. Martin
28 Attorney for Plaintiff